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ABSTRACT

These reports on school integration in Pasadena (California), Tampa-Hillsborough (Florida), Charlotte-Mecklenburg and Winston-Salem/Forsyth (North Carolina), and Pontiac (Michigan) are based on interviews and material gathered by Commission on Civil Rights staff members from January 10, 1972, through March 29, 1972. In each school district staff members interviewed the superintendent, board members, principals, teachers, and students at elementary and junior and senior high schools, as well as parents of school children. In addition, classrooms were visited and students were observed in daily school activities. The particular schools were selected with the assistance of the superintendent to provide a cross section of experience with integration. Likewise, attempts were made to select for interview teachers, pupils, parents, and board members in such a way as to obtain as wide a range of opinions as possible on school integration. Interviews were also conducted with black and white community leaders or organizations spokesmen with differing viewpoints on school integration. Information obtained through interviews was supplemented by data in court decisions dealing with school desegregation in each district, the desegregation plan for each district, and statistical and background materials provided by school officials of each city. (Author/JM)

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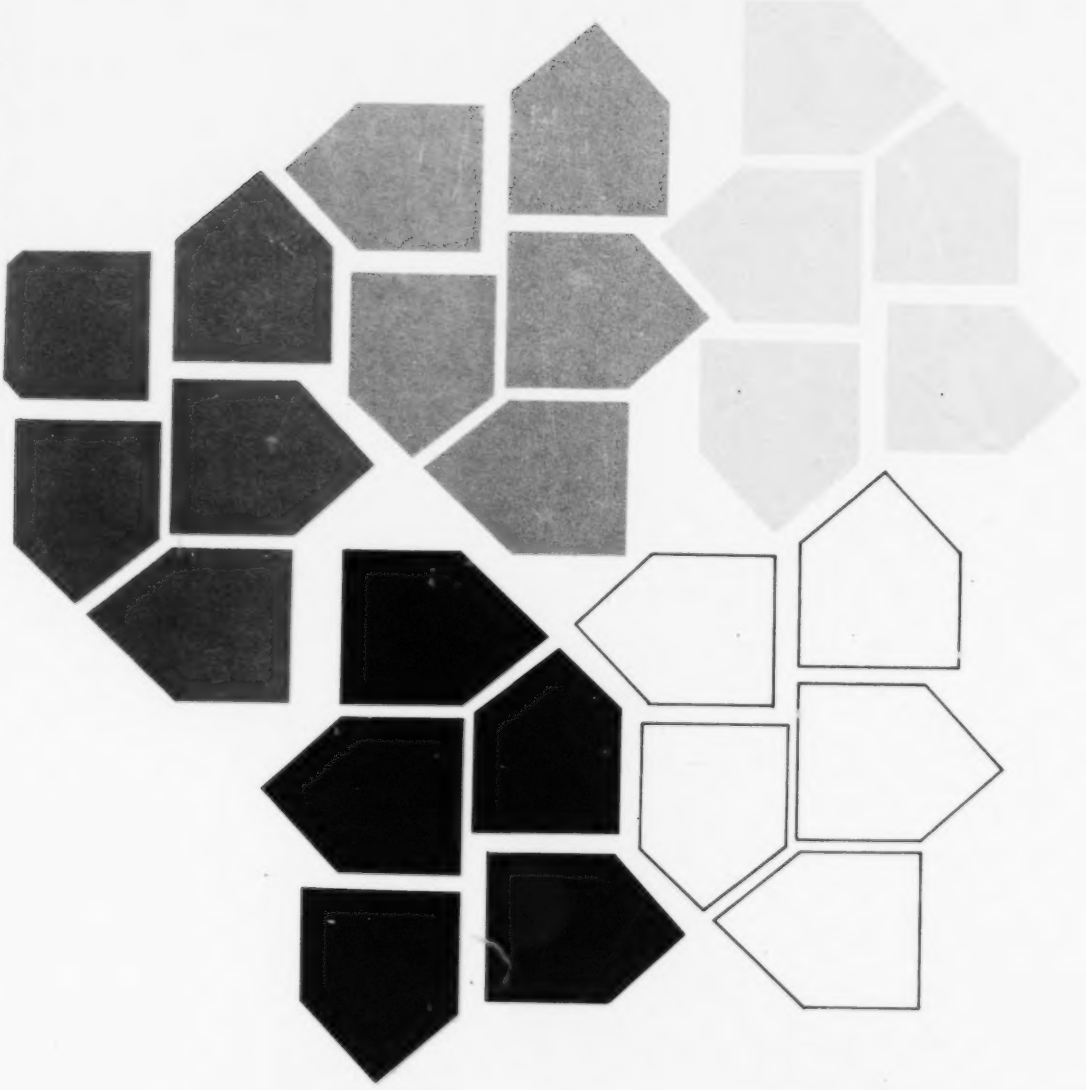

FIVE COMMUNITIES:

THEIR SEARCH FOR EQUAL EDUCATION

United States
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December 1972

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FOREWORD

If one listens to the opponents of integration, one is led to believe that nothing but evil can come from it. One hears an endless chorus of horror stories: fights on the buses and in the schools, parents upset, schools disrupted, learning curtailed, all the rest. But what are the facts?

In order to answer that question, the Commission early this year sent experienced members of its staff to five cities in which busing has been used extensively in order to desegregate schools. The school districts visited were Pasadena, California; Tampa-Hillsborough, Florida; Pontiac, Michigan; and Winston-Salem/Forsyth County and Charlotte-Mecklenburg County in North Carolina.

Although the Commission's studies were conducted in five diverse cities, the experiences of these communities reveal many common elements. Basically, the Commission found five school systems proceeding with the business of educating students. It found thousands of students learning and working together. It found some problems. Most important, perhaps, it found that students and teachers were trying to deal with the problems in a constructive way.

Education has many constituents—the community as a whole which pays for it, the parents who expect their children to be taught, the students themselves, and the staff which operates the system.

The interviews and observations of the staff of the Commission on Civil Rights showed the most widespread acceptance of desegregation by those most intimately involved in the educational process—the students and the teachers.

In general, students seemed more receptive to desegregation efforts than their parents. While many students, minority and majority, expressed initial doubt or opposition to desegregation, they reported to Commission staff that they supported it after having gone to school under the new organization.

Each of the school systems took steps within schools which seemed to be effective in easing the process of integration. Educators tried to preserve the student leaders' pre-desegregation status in each school by allowing them to retain similar positions of leadership in integrated schools. Participation in extracurricular activities and athletics often was facilitated by providing late buses. School administrators also attempted, with lesser success, to encourage active PTA participation in desegregated schools. In several cities, the need to travel to distant parts of town to attend PTA meetings was considered an obstacle to such participation that has yet to be overcome.

Within the community, school boards did not take equally extensive steps to ease implementation. Commission staff members heard numerous criticisms that school boards failed to exercise leadership in desegregating schools and to support integration as a worthy goal as well as a legal requirement. Many expressed the opinion that desegregation would have been achieved more smoothly had such leadership been provided.

Cooperation from parents is also a crucial factor. Yet the reaction of parents to desegregation in all five communities was much more hostile than that of students. The resistance of parents appeared to aggravate tension within the schools. In Pontiac, Michigan, incidents of violence and disorders in the schools declined as parents abandoned picket lines and other forms of protest.

While there was some opposition to desegregation plans by blacks, most of the opposition came from the white community. Thus, in Winston-Salem, Charlotte, and Tampa, some blacks protested the fact that black children bore the burden of busing more than white students, and in the same cities there was resentment

at the loss of all-black high schools which were sources of pride to the black community. Nowhere, however, did Commission staff find black groups organized to protest desegregation. In contrast, in each city visited there was at least one white organization which opposed school integration.

Reports of racial incidents among students, the Commission staff found, were generally exaggerated. In all five cities, such incidents occurred primarily at the inception of desegregation and declined sharply after the first few days of school. Often, as in Pontiac, tensions generated by protests outside of the schools contributed to problems within the schools.

Most bus trips, except in Winston-Salem, took less than 30 minutes. In none of the cities did the Commission staff learn of any bus accidents in which a student was injured—a pattern that is consistent with the excellent safety record of school busing throughout this county. No teacher complained that busing interfered with the education of children. Students did not appear to mind their ride to school, and often said they enjoyed it. Busing for integration did, however, create inconveniences for many families. The use of the same buses to make several round trips before and after school, while economical, creates a burden on families which have several children leaving home and returning at different times. Additional buses and improved routing could alleviate this problem in many cases.

The desegregation plans in the five communities involved some restructuring of the grade systems in the schools. This has proved to be an educational improvement in the view of administrators and teachers. Many administrators, including the superintendents in Winston-Salem and Pasadena, expressed approval of the new grade structure and were pleased by the new educational opportunities they felt it presented.

It was too early in the process of integration to evaluate quantitatively its effects on the quality of education. No standardized test results were available in any city the Commission staff visited. Educators in each city claimed that standards had not been lowered in any way. Some teachers believed that minority pupils were receiving a better education in integrated schools than they had in segregated schools because more was expected of them. Some teachers, however, noted that the stiff competition in some integrated schools had a discouraging effect on those minority pupils who felt themselves unable to compete due to inadequate preparation. No change in the motivation or performance of white pupils was noted in any school.

The use of busing as a desegregation technique did not result in massive absenteeism or withdrawal of pupils from public school systems, although there has been some white flight. Most parents in the communities visited have been reassured concerning the safety of their children in going to and from school.

Most important, school desegregation had begun to make inroads on the entrenched racial isolation and hostility with which most pupils (and teachers) confronted each other in segregated systems. Again and again pupils of both races told Commission staff members of their initial fear of going to an integrated school but that the experience of actually attending one not only allayed their fears but changed their attitudes toward members of other racial and ethnic groups. The remark of a high school girl in Pasadena, that in her integrated high school people measured each other by their individual achievement, regardless of race or ethnic background, suggests that a part, at least, of this Nation's ideal of racial equality is being achieved. In all of the systems studied, evidence of successful attempts by students and educators to overcome hostility and alienation outweighed evidence of conflict and strife.

The early experience of these communities can be helpful to others which follow them in the process of desegregation.

That integration has not been immediately and totally successful in every aspect may be disappointing but it should hardly be surprising. After generations of separateness, it would be unrealistic to expect integration to be an instant or uniform success.

What desegregation can do, beyond its surface purposes, is awaken the whole educational system, bring it in tune with today's world, shake it into self-examination and improvement, cause it to re-evaluate both weaknesses and capacities, re-examine its facilities, techniques, and philosophies—in other words, make it work and work better.

PREFACE

These reports on school integration in Pasadena, California, Tampa-Hillsborough, Florida, Charlotte-Mecklenburg and Winston-Salem/Forsyth, North Carolina, and Pontiac, Michigan are based on interviews and material gathered by Civil Rights staff members from January 10, 1972, through March 29, 1972. In each school district staff members interviewed the superintendent, board members, principals, teachers, and students at elementary and junior and senior high schools, as well as parents of school children. Principals, teachers, students, and parents included black and white persons in each group. In addition, classrooms were visited and students were observed in daily school activities. The particular schools were selected with the assistance of the superintendent to provide a cross section of experience with integration. Likewise, attempts were made to select for interview teachers, pupils, parents, and board members in such a way as to obtain as wide a range of opinions as possible on school integration. Care was taken to interview parents and students, white and black, who favored and who opposed the current school integration plan in their district. Interviews were also conducted with black and white community leaders or organization spokesmen with differing viewpoints on school integration. Information obtained through interviews was supplemented by data in court decisions dealing with school desegregation in each district, the desegregation plan for each district, and statistical and background materials provided by school officials of each city.

Drafts of this report were sent to each school district studied, except Forsyth County, with requests for comments from the superintendents and school board members concerning the sections relevant to their districts. Commission staff members discussed the portion on Forsyth County schools with the superintendent and several school board members. This report reflects the comments and recommendations made by the school districts to the Commission.

Appendix A of the report discusses the legal implications of a proposed amendment to the Constitution of the United States, typical of similar proposals now pending before the Judicial Committees of both Houses of Congress. This proposed amendment would prohibit assignment of students to particular schools because of race, creed, or color. In addition, Appendix A contains a review of school desegregation cases, with emphasis on the period between 1967 and the present.

Appendix B of the report is a brief review of the law in areas other than education, in which race conscious remedies to overcome the effects of past discrimination have been utilized.

PUBLIC SCHOOL DESEGREGATION IN PASADENA, CALIFORNIA

Background

In 1970, Pasadena's population of 113,227 consisted of 90,446 whites, 18,256 blacks, and 4,625 other races or ethnic groups. Pasadena is the site of one of the U.S. Justice Department's few Northern school desegration suits. In January 1970, the U.S. District Court for the Central District of California found that the board of education had used a neighborhood school policy against crosstown busing to avoid integration of public school students and faculties.[1]

At the time of the court order, the board operated 28 elementary schools, five junior high schools, three senior high schools, and two special schools in a district containing all of Pasadena, the unincorporated town of Altadena, the city of Sierra Madre, and portions of Los Angeles County near the eastern boundary of Pasadena. For the 1969-70 school year, it had enrolled 30,622 students: 17,859 Caucasians, 9,175 blacks, and 3,590 of other minority ethnic or racial backgrounds. In percentage terms, 58.3 percent of the students were white, 30 percent black, 8.2 percent Chicano, and 2 percent Asian American.

Pasadena, California is an example of a nonsouthern city in which a court ordered desegregation plan appears to be successful in integrating the school system.

Prior to the court order, Pasadena operated a neighborhood school system which resulted in highly segregated elementary schools. In the 1967-70 school year, 93 percent of the white elementary school students attended majority white schools and 85 percent of the black elementary students attended eight majority black schools. There was evidence that school attendance zones were redrawn on several occasions to avoid assigning white students to majority black schools.

Assignments to junior high school also had been made on the basis of race. For 20 to 25 years, students from all-white Linda Vista were transported to three all-white or majority white junior high schools to avoid assigning them to the majority black Washington Junior High, which was closer to their neighborhood. Each school year until desegregation, Washington had more black students attending it than the total of blacks attending the other four junior highs. In 1969-70, 48 percent of Pasadena's junior high students attended Washington, composing a student body which was 98 percent minority, and 2 percent white.

The Pasadena School Board made some attempt in the 1960's to achieve better racial balance in its three high schools, all of which were majority white.[2] Although the board made changes in attendance zones during this period to improve racial balance, racial imbalance in the schools increased.

Litigation

In August 1968, a group of students filed an action against the board of education, alleging racial discrimination in the school system. The Department of Justice intervened as plaintiff in December 1968. The district court opinion, issued in January 1970,[3] found racial imbalance and segregation among the student bodies and faculties of the Pasadena Unified School District at all levels—elementary, junior, and senior high. It further found racial imbalance had been perpetuated by the school board's neighborhood school policy and its policy against crosstown busing. The court ruled that previous desegregation efforts, based primarily on freedom of choice, were inadequate to meet the school board's 14th amendment obligations, since there were more effective methods of reducing segregation in

[1] *Spangler* v. *Pasadena City Board of Education*, 311 F. Supp. 501 (C.D. Calif. 1970).

[2] Two high schools in the 1960's contained student bodies which were close to the overall district ethnic breakdown.

[3] *Spangler* v. *Pasadena City Board of Education*, 311 F. Supp. 501 (C.D. Calif. 1970).

both majority white and majority black schools.

The board was ordered to submit a plan by February 16, 1970, that would include measures to desegregate school faculties and staffs, provisions for location and construction of facilities in such a way as to reduce segregation, and a pupil assignment system that would result in no school having a majority of minority students by the 1970-71 school year.

In January 1970 the board of education voted 3-2 not to appeal the district court judgment and directed its staff to prepare a plan that would balance the elementary schools racially and ethnically, and insure equal educational opportunities for all students.

The Plan

The plan adopted by the board and put into effect for the 1970-71 school year was designed to meet five criteria:

1. All schools should have populations as similar as possible to the whole district's ethnic composition.
2. The neighborhood school concept should be maintained to the extent possible consistent with an integrated system.
3. The shortest traveling distances to effect integration should be used.
4. Optimum use should be made of existing facilities.
5. Population trends and future mobility should be considered in building a plan for permanent desegregation.

Student Assignment

Elementary Schools

The school district was divided into four racially and ethnically balanced areas. The minority population in Pasadena is now concentrated in the western areas of the city, and has been moving eastward. The four school areas were drawn so that they run from east to west, hopefully to provide some sort of permanence to balancing racial and ethnic populations within the areas, which are subject to annual revision.

The areas were subdivided into individual school zones and pupils assigned to a school according to grade level and attendance zones. The old elementary schools were reorganized into 16 primary (K-3) and 11 upper grade (4-6) schools. Assignment is designed to result in ethnic and social composition in each school that approximates the balance of the entire school district. Division of the former 6-year schools into two groups was planned, in part, to permit students to go to a neighborhood school for a portion of their elementary schooling, rather than ride to a more distant school for all of it. The Pasadena Plan also enables children to stay with their neighborhood friends for this 7-year period. Under the criterion that no school have a majority student body of any minority group, no elementary school would have more than a 62 percent or less than a 47 percent white enrollment.

Junior High Schools

Four of the five junior high schools in Pasadena were turned into seventh and eighth grade schools. The fifth became part of a ninth through 12th grade high school. Attendance areas for the four "intermediate" schools (7th and 8th grade) were similar, but not identical, to those for elementary schools. It was predicted in the plan that the four schools would have student bodies ranging between 53 and 60 percent white, 28 and 33 percent black, and 7 and 18 percent other minorities.

Senior High Schools

The Pasadena Plan's provisions for desegregation in high schools were more complex than those for earlier grades. In September 1970, under "Phase I", attendance zones were to be used so that the incoming 10th grade class in each school would be racially and ethnically balanced. In so-called "Phase II" one high school, Blair, was to be moved to a site north of another, Pasadena High School. In "Phase III", the other high school would be moved to the same site to form an educational park, together with the ninth grade school. Each school would be racially and ethnically balanced. However, the educational park is no longer part of the long-range plan of the district. In 1970-71, it was projected that the 10th grade student population at each high school would range from 57.6 to 61.5 percent. The upper two grades, however, would not be racially balanced. When the plan was implemented, ninth graders were also sent to the high

schools, and the ninth grade was racially balanced.

Other Details

The plan abolished existing school board policies allowing transfers for various reasons which enabled segregation to continue, and established a much stricter policy in this area. Until 1968 the board had allowed both black and white students to escape from minority schools. After free choice was abandoned, transfers to schools on the edges of the district were encouraged to improve racial balance. Few were made. However, many transfers were granted quite easily to white students to attend white schools, for reasons such as care of siblings, fear of fights, and bad school conditions in the former black schools.

The plan required large-scale busing, involving approximately 60 percent of the elementary students (8,000 children), 50 percent of the junior high students (3,600), and 27 percent of the senior high students (1,900). The total predicted cost was $1,036,000 for the first year.

Teacher Hiring, Assignment, and Promotion

In its plan, the district outlined a recruitment program for minority teachers and established racial quotas for minority teacher assignment. Each school was to have no fewer than 15 percent and no more than 45 percent minority teachers. Recruitment efforts were also planned for vacancies in nonteaching positions.

Preparation for Implementation

During the summer of 1970, extensive work was done on school buildings and grounds. In addition to moving furniture required to set up the new system of elementary schools, new doors, blinds, and windows were installed in the more run-down buildings. Extensive painting and gardening was done. A dining room was built for Washington Junior High, whose student composition in 1969-70 was 98 percent minority.

The ease with which desegregation was implemented in September, however, was in large part the result of school board and community organizations' efforts to explain and promote the plan. The district began mailings to parents as early as May 1970 explaining how the desegregation plan would affect them. These informational mailings were continued throughout the summer.

More than 50 community organizations endorsed the plan and many actively assisted in its implementation. For example, the League of Women Voters manned an information center from May to September, answering various questions about the plan. This center also helped to stop unfounded rumors by providing quick, accurate information to citizens.

Information booths were set up by volunteers at 23 locations throughout the city; television and newspapers carried stories about the plan; and books on school integration were placed on reserve at public libraries.

To help students who would be attending school together to get to know each other, PTAs sponsored social events. The PTA and another volunteer group recruited and trained so-called "transportation aides" to ride buses and to stand at bus stops in the morning. Technical advice on traffic control was provided by law enforcement agencies, and the Automobile Association of Southern California donated leaflets and cards on bus transportation and standards of behavior for students.

School officials, parents, and students interviewed by Commission staff said that they believed that the ease with which the plan was initially put into effect was the result of the widespread public support. It even had the editorial support of the Pasadena Star-News, although the paper clearly was not completely behind the school desegregation movement.

Transportation

The busing required under the plan was, and remains, the most controversial aspect of Pasadena's school desegregation efforts. Busing is widespread. According to the school district officials, 87 buses are used to transport children to school as opposed to the 31 buses used prior to desegregation. The buses now travel 3,957 miles daily as compared to 960 miles previously. A total of 12,882 students are bused, an increase of almost 9,000. The average ride is now 20 minutes, rather than 12 as before, with the longest being 36 minutes. The daily cost per student has increased from 2 cents to 57 cents. The additional expense of

busing has not been borne by the school board, however. Because of State reimbursements and Title I funds, the entire cost, during the first year, except for $158,000, was paid by other than district funds.[4] The district has received approximately $228,000 in Federal Emergency School Assistance Program funds during the past 2 school years, which has more than offset the cost of busing.

The only bus accidents which have occurred were minor traffic accidents, none of which resulted in injury to the students.

Protests against busing were not very militant and came primarily from parents. The reasons for this may be that the transportation system was carefully designed. There are no long bus rides and elementary school children attend school with other neighborhood children, even when they are bused across town. Some buses leave school late in the afternoon so that all students can participate in extracurricular activities.

Reactions—Parents

Most of those persons interviewed agreed that parental reaction to the *Spangler* decision and to the plan was much more vehement than that of the students.

In spring 1970, the Pasadena Appeal Committee was created to oppose school desegregation. Its name reflects its opposition to the school board decision (by a 3-2 vote) not to appeal the district court's ruling. Its motion to intervene in the litigation was denied, but many parents active in PAC are still strongly opposed to busing.

Most of the adult hostility came from white residents in Pasadena. There was an attempt to recall the three school board members who had voted against appealing the district court's order. About 63 percent of the black community and 50 percent of the white community voted in the October 1970 election. The incumbents won with 52, 54, and 56 percent of the vote, and it is generally agreed that the large turnout of black voters was a major reason for their victory.

A school district official noted that the desegregation issue polarized the community, but said that there was only one meeting where there was what he termed an "angry crowd." That was at a junior high school the night the plan was explained to the public. The same official believed that the recall election served as an emotional outlet for much of the hostility against the plan.

One "danger" of desegregating public schools is that it often results in a white exodus from the school district. Pasadena seems to have escaped extensive white flight, although it is too soon to know whether or not the white population will remain stable.

During the first year of desegregation, Pasadena's student population dropped by approximately 2,000 white students. Not all of this decline can be alleged to be a result of desegregation, however. The population had been declining by approximately 1,000 pupils annually for the past several years due, in part, to layoffs in the aerospace industry which forced families to move and to a declining birthrate. Loss of some 5,000 homes due to freeway construction has also contributed to the attrition.

Some students did leave rather than attend racially mixed schools. Some parents, strongly opposed to desegregation, sent their children to private or parochial schools. It is interesting to note, however, that some of these students returned to the Pasadena School System for the 1971-72 school year, after seeing that integration was not as calamitous as feared. The rate of student population decline has slowed between the 1970-71 and the 1971-72 school years.

School officials are optimistic about parental reactions to the plan, believing that time works in favor of integration. Opponents move away, lose their fears, or resign themselves to their fate. Many officials and teachers feel that most parents now accept integration.

An article in the Pasadena Star-News on September 17, 1971, analyzed data collected by the Pasadena Board of Realtors Multiple Listing Service, and found that houses within the Pasadena Unified School District continued to sell as well or better than they had during the period immediately before the *Spangler* decision. The article concluded that busing did not result in a flooding of the housing market or a depression in it. The article said that complaints that busing had caused a drop in

[4] The school board had paid $190,000 for busing in 1968-69 after curtailed expenditures for transportation. In early years it had spent as much as $400,000 for busing.

real estate value were simply not substantiated by the evidence, and that the "Pasadena housing market is extremely healthy and has shown an upsurge."

Reactions—Students

Students in Pasadena were initially less hostile to desegregation than their parents. After a full year of operating under the plan, students seem to be accepting the new system. The most successful level of integration appears to be in the elementary schools, where students mingle well with one another. One elementary school principal noted that the white children in his school had been very "secular" before and had not known any minority children. In his view, the white students were benefiting greatly from integration. Other officials mentioned that black and Mexican American children seemed more confident and poised under the new system. Teachers and administrators believe it is too soon to know if educational achievement has improved, but neither have they noticed any decline.

Junior and senior high school students have had a more difficult time adjusting to desegregation. In at least one of the four seventh and eighth grade schools, Eliot Junior High, the first year was tumultuous. Many students who were transferred retained old school loyalties and did not think of the new schools as "theirs". There was little interracial mingling outside classrooms. The second year was easier, however, with the present eighth graders feeling an attachment to the school and more interracial contact than before.

All senior high school students interviewed seemed to feel that integration was working. Student leaders interviewed at John Muir High School (one white, one black, one Mexican American) had all been against desegregation initially, but were in favor of it after 1 year. They felt the curriculum was better and students more involved with their school than previously. Blacks allege, however, that they are being channeled into lower ability classes and students report that there is still little racial intermingling outside of classes, except at sports events. Two of the three mentioned that socioeconomic differences among students caused more friction than racial differences. One student, a Mexican American girl, who is editor of the school newspaper, felt that integration has made Mexican American students much more aware of their culture. She also stated that at an integrated school she believes she has a much better chance of being recognized. She felt the atmosphere at school is different, and that all students have an equal chance. "Before," she concluded, "I probably would have ended up as a secretary. Now I have bigger goals."

Educational Improvements

The Pasadena School System made many curriculum changes as it implemented the plan. Students, teachers, and administrators all praised the innovations. As one student put it, "Before integration, the school viewed us as students here to learn what they wanted to teach us." Now students have a role in recommending curriculum changes. More courses are offered in such areas as history, music, and literature. Ethnic study courses are also given.

Incidents

Since desegregation, there have been no major outbursts of racial hostility, and the rate for all forms of incidents—personal fights, vandalism, and the like—is lower than it has been in 6 years. Although during the first year of desegregation the incident rate was about the same as the preceding year, the Pasadena schools have been very calm this year, calmer than those of neighboring nonintegrated school systems, according to one school official.

PUBLIC SCHOOL DESEGREGATION IN HILLSBOROUGH COUNTY, FLORIDA

Demography

The Hillsborough County School District is made up of the city of Tampa and surrounding Hillsborough County, Florida. The county population in 1970 was 484,490 which included Tampa; Tampa's population was 274,359. Tampa is a light industrial center in which the main industries are lumber, canned fruits, and scrap metal. The 1959 median family income of residents of Tampa was $5,602, while that in Hillsborough County was slightly lower. The median family income for nonwhites in Tampa was $2,949. Most of the nonwhite population is concentrated in Tampa.[5]

The Hillsborough County School District was the Nation's 26th largest in 1970, having a total student population of approximately 101,298, of whom 19.5 percent were black. This land area of the district is 1,037.9 square miles.

History of School Desegregation Efforts

In the light of the U.S. Supreme Court's decision in *Swann* v. *Charlotte-Mecklenburg,* in May 1971 the Federal district court, for the middle district of Florida (Tampa Division), on its own motion reopened the Hillsborough County School case[6] and ordered the school board of Hillsborough County to completely desegregate county schools in the 1971-72 school year.[7] With this order the court issued an opinion setting forth the history of school desegregation litigation in the county and the legal basis for its directive. The court characterized the situation in 1971 as follows:

> Almost ten years ago this Court found as a matter of fact that prior to and after May 17, 1954, defendants operated, maintained and staffed a completely dual school structure. The school board made no attempt whatever to dismantle the system until September 1961. In the intervening ten years the defendants have at no time taken any steps which have had the effect of significantly altering the system's racially biased student assignment system.[8]

A review of racial statistics for schools dating from 1956 and of current data, led the court to conclude that of the one race schools identified as "white" or "Negro" ten or more years ago, nearly all of those schools continuing in operation were still racially identifiable. Changes in the racial makeup of schools have generally resulted in resegregation.

The first desegregation plan, adopted in 1963, provided for integration at the rate of one grade a year. It contained a transfer provision under which white students could avoid attendance at black schools even if they lived closer to a black school.

From 1967 to 1969, the system operated under a variety of freedom of choice plans termed "equally ineffective" by the court.[9] From 1969 to the current order, the system functioned under plans consisting of various geographic attendance zones. As of October 1970, 46 percent of the systems' black students attended 15 all-black schools; 69 percent of the black students (although only 19 percent of the total student population) were in schools which were at least 50 percent black. The school board's figures also showed that 69 percent of the white students attended all-white, or 95 percent white schools. The court concluded that desegregation plans implemented prior to 1970 had failed to abolish the dual system of student attendance. The reasons cited

[5] Data taken from the 1960 Census of Population, Characteristics of the Population of Florida, Part II. The figures for the median family income of Tampa and county residents are based on a family of four, consisting of one wage earner, with two children under 18. The census did not specify whether the figure for the median income for nonwhite families in Tampa has the same basis. The median income of nonwhite rural families was not available. The 1970 census figures for median family incomes in Florida were not available at the time this report was prepared.

[6] In 1958 the NAACP Legal Defense and Education Fund had brought a school desegregation suit against the Hillsborough County Board of Public Instruction. The Board of Public Instruction is the policy-making body for the school system. At present it is composed of six men and one woman, all white. There has never been a black member on the school board.

[7] *Mannings* v. *Board of Public Instruction of Hillsborough County (Fla.)*, No. 3554 Civ. T., May 11, 1971 (hereinafter cited as Order).

[8] Order p. 36.

[9] Order p. 38.

were excessive reliance on free choice, liberal transfer provisions which enabled white students to avoid desegregation, and an absence of serious attempts to eliminate black schools.

The school board was ordered to submit to the court by June 15, 1971, an effective plan for desegregation of all schools. The court required that in preparing the plan the school board begin with the proposition that a white to black ratio of 86 percent to 14 percent was appropriate for senior high schools, 80 percent to 20 percent proper for junior high schools, and 79 to 21 percent appropriate for elementary schools. These ratios reflect the ratios of the white to black student populations for each type of school. The court ordered that the plan accomplish desegregation by pairing, grouping, clustering, and the use of satellite (noncontiguous) attendance zones. The court held that if the school board failed to submit an acceptable plan, the court would formulate its own plan, relying upon the plaintiffs' proposed plan, or would appoint an expert at the school board's expense.

The Current Public School Desegregation Plan

The superintendent of schools and a member of the school board told Commission staff members that following the May 1971 order, there was a consensus among board members that they should implement the order as best they could. Thus, they did not appeal this order. Instead the board appointed a large desegregation planning committee, consisting of about 150 representatives of diverse segments of the Hillsborough County population, including prominent business leaders, civic leaders, and important black and white community spokesmen. This committee was divided into subcommitees which worked on various aspects of the school desegregation plan. The plan was developed within the prescribed time limit and was accepted by the court.

The plan contains separate arrangements for desegregation of the elementary, junior, and senior high schools. There are 89 elementary schools in Hillsborough County. The principal method used to desegregate them is a "clustering" plan. Seventy-seven elementary schools are integrated through 17 clustering arrangements. In each of these, one formerly predominantly black elementary school is clustered with from two to five formerly predominantly white elementary schools. The black elementary school has become a sixth grade center, and all sixth graders from the black school and each of the white schools attend this sixth grade center. First to fifth graders from the formerly black school are distributed among the formerly white schools through the use of satellite zones which cover the boundaries of the black school. First through fifth graders who reside in the boundaries of white schools continue at the schools previously attended. The other elementary schools are integrated through a variety of zoning devices.[10] In this way, large scale busing does not begin for white children until the sixth grade, but begins for the black children in the first grade.

Under the plan there are 23 junior high schools and three junior-senior high schools which are integrated through clustering and satellite zoning. There are eight cluster arrangements in the plan. In these arrangements, generally a formerly predominantly black junior high school is clustered with from one to three formerly predominantly white junior high schools.[11] One junior high, formerly a black school, is a seventh grade center which all seventh graders attend. Eighth and ninth graders from that junior high school are distributed among the other two junior high schools through satellite zones. Eighth and ninth graders who reside within boundaries of these schools continue in attendance there. No junior high schools were closed under the plan.

At the time of the drafting of the plan there were 14 senior high schools in the county, including three junior-senior high schools.[12] Under the plan the two formerly black high schools, Blake and Middleton, were made into

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[10] Two other elementary schools are integrated through rezoning. Another elementary school is integrated through the use of a satellite zone. Four elementary schools had been integrated in the 1970-71 school year and did not have changes in their attendance boundaries. The plan called for the closing of one black elementary school. The board justified the closing of this school on the ground that it was not an adequate modern elementary school.

[11] Three formerly white junior high schools and all formerly black junior highs are seventh grade centers. One junior high school has remained a seventh through ninth grade school with its racial distribution achieved through altered attendance zones.

[12] Prior to the district court's May 1971 order there were 3,400 black senior high school students in the county of whom 1,900 were attending predominantly white schools.

junior high schools.[13] The name of the formerly white high school, Hillsborough High, was changed to Hillsborough-Middleton. The other Middleton students were assigned to other formerly white schools. The attendance area which formerly was served by Blake was divided among a new high school not yet constructed and formerly white high schools. Since the new high school is not yet finished, its students attend the afternoon session at another formerly white high school. Rezoning and satellite zoning were also used to integrate the rural high schools. The one vocational high school has no precise boundaries but is integrated.

Under the plan for elementary schools the white to black student body ratio was to be 79 percent to 21 percent, for junior highs it was to be 80 percent to 20 percent, and for high schools 85 percent to 15 percent.[14]

Before accepting the plan, the court held a hearing and permitted community members to voice their objections. Throughout this period the school board, the superintendent of schools, the Chamber of Commerce, responsible civic groups, and the press all actively supported the plan's adoption.[15]

Opposition to the Plan

An important feature of the Hillsborough school desegregation plan is that every white family in the county shares equally in busing to formerly black schools. During the summer there were some attempts by white anti-integrationists to thwart the court's order, but no large organizations opposed adoption of the plan and none has caused disruption in the schools.

Commission staff was informed that during the summer, and continuing throughout the school year, there had been some dissatisfaction in the black community over the large amount of busing for black children and the changing of the two formerly black high schools to junior high schools. Commission staff was told that many members of the black community felt strongly that the Blake and Middleton facilities could have been expanded to allow them to continue as high schools and remain as important sources of pride and identification for the black community.[16]

Adoption of the Plan

At the time the school board submitted its plan to the court, the Bi-Racial Advisory Committee, appointed by the court in 1970, filed objections to the plan.[17] The committee maintained that the plan discriminates against the black student population and their parents because it requires most black students to be bused out of their communities 10 of their 12 school years, while whites are bused out of their areas for only 2 years. The committee also objected to the number of grades taught at previously black schools. The committee particularly criticized conversion of the two formerly black high schools to junior highs.

White Flight

It is believed that about 2,000 children have been lost to private schools because of the current integration plan. About 1,000 of those left the sixth grade, about 500 the seventh, and the other 500 were spread through the other grades.[18] One of the reasons there were not greater losses to the private schools is that many of these resisted expanding their school enrollments for students seeking to avoid integration. The superintendent has noted that now there seems to be a trend of private school

[13] By making the two formerly black high schools junior high schools, with attendance for only 2-year periods, the board hoped there would be a minimum of white flight to private schools. (The court had permitted the school board to take into consideration factors which might prevent white flight.) However, the two formerly black high schools had been scheduled for change to junior highs under a State survey which had called for the closing of small senior high schools in the country. Two other small predominantly white schools are being phased out for this reason.

[14] Actual attendance figures do not vary significantly from these proportions.

[15] However, the school superintendent had publicly stated in speeches and to the press that the mixing of different economic and social groups, as is found in a mixture of black and white students, creates tensions and is an undesirable way to run a school system. Nonetheless, the superintendent explained in a letter to the Commission dated April 28, 1971, that he and the school board "have always followed the law on desegregation and have never violated any court orders regarding integration."

[16] The two black high schools had won many State athletic championships. In addition, these schools had been centers of black social life.

[17] The Bi-Racial Advisory Committee consists of five members selected by the NAACP Legal Defense and Education Fund and five chosen by the school board. The committee was appointed to assist the board in implementing desegregation plans and to advise the board on staffing and other matters concerning school desegregation.

[18] The sixth and seventh grade years are the years when most white students are bused to formerly black schools.

students returning to the public schools. One seventh grade center, for example, reported that, in 1 month alone, 12 students who had left the public school system for private schools had returned. More children are expected back into the public schools in September 1972.

Attempts to Ease Adjustment of Students to Integrated Schools

To ease adjustment to integrated schools, the school board adopted the rule that all students who held school offices, were cheerleaders, or members of any organization or team in their former schools would automatically retain their positions in the school to which they are assigned for 1971-72. This means that the president of a class in a formerly black school is co-president with the president of the class at his new school.

To further aid adjustment, every junior and senior high school was assigned a community relations specialist and an assistant specialist. Many of these are former teachers. Their salaries are being paid through an Emergency School Assistance Program (ESAP) grant.[19] If there is a white community relations specialist in the school, his assistant is black, or vice versa. During the summer the community relations specialists held seminars with teachers, principals, and students to help them in interpersonal relations with people of different races. In the school year the specialists have been involved in working out interpersonal relations problems and providing a means for students to talk with the administration. Every high school and junior high school has a student advisory committee of 12 black students and 12 white students, picked by the student government to work with the community relations specialists. The specialists and student biracial committees play important roles in moderating any antagonisms between blacks and whites.

Commission staff also was told that black schools were improved to meet the needs of the grades being taught there. This reduced complaints among white students assigned to these schools and their parents.

Student Integration Within Schools

The school board has not found it necessary to abolish ability groupings in schools to maintain integrated classes. It has recommended, however, that principals maintain classrooms of less than 50 percent black. On the basis of standardized tests and teacher recommendations high school students are assigned to required classes that are either basic, intermediate, or advanced. While black students tend to be concentrated in the basic courses, many are found in the intermediate and advanced.[20] In the sixth and seventh grade centers and in the junior high schools there is some group teaching and other innovative teaching programs are used. These groups and programs are well integrated.

It is too early for the school system to project the effects of integration on academic performance. Following the pattern of previous years, standardized tests will be given to students at regular intervals so that comparative data will be available.

In the high schools and junior highs, although blacks and whites seem to mingle socially in classes, they tend to group by race in class seating, in the cafeteria, and in other social gatherings.[21] In contrast, elementary school children interact freely in biracial groups in all areas.

According to students of both races interviewed by Commission staff, black students are participating increasingly in extracurricular activities in high schools and in junior highs, particularly in sports. It is expected that black

[19] The emergency funds for ESAP were appropriated under authorization granted in six statutes: The Educational Professions Development Act, Part D (20 U.S.C. 1119-1119a); The Cooperative Research Act (20 U.S.C. 331-332b); The Civil Rights Act of 1964, Title IV (42 U.S.C. 2000c-2000c-9); The Elementary and Secondary Education Act of 1965, section 807 (20 U.S.C. 887); The Elementary and Secondary Education Amendments of 1967, section 402 (20 U.S.C. 1222); and the Economic Opportunity Act of 1964, Title II (42 U.S.C. 2781-2873).

The ESAP grant totals $2,225,000 and is being used primarily for learning specialists, a human relations department within the school administration, including the school specialists and aides, and supplies.

[20] In Hillsborough-Middleton High School it is planned for the 1972-73 school year to eliminate basic and intermediate ability groups for the 10th grade, retaining only advanced groups. It is believed that this will give the children in the basic groups a greater stimulus to work by being in classes with better students, and will also disperse children with discipline problems who seem to be concentrated in the basic classes.

[21] In addition, several black students have explained that black students who are going to formerly white schools often sense that they are in alien territory and need extra encouragement to feel welcome. These black students believe that there has not been enough such encouragement.

students will be even more actively involved in extracurricular activities in future years. Whenever a child is on a team or in an extracurricular activity, a school board rule requires that a bus be provided at the school to transport him home after regular school closing hours.

Pupils have explained that the students who play sports with students of another race or who work with them in other extracurricular activities are the people most likely to develop interracial friendships.[22]

In the Hillsborough-Middleton High School, at the opening of the school year, many black students from Middleton High School stayed together and were not a part of Hillsborough school life. Many continued to wear the Middleton shirts and cheer the Middleton cheers. It appears, however, that they are gradually identifying more with Hillsborough. For example, at athletic events they now cheer for the Hillsborough team. Nevertheless, many of the black students express regret that they are losing their identification with Middleton.

Transportation

Last year the school system transported about 32,000 students on 186 school buses. The 1970-71 operating budget for student transportation was approximately $826,000. In that year, each morning school buses traveled approximately 6,403 miles.

Before the current school plan was officially adopted, realizing that the extensive school integration would require many more school buses, the superintendent prepared to purchase an additional 125 buses. Thus, when the school plan was finally adopted there was no delay in getting purchase contracts executed and having the buses ready in September 1971. The new buses are being financed through a $1 million bank loan undertaken by the school board.

Under the plan about 52,000 students are being bused to and from schools, an increase of some 20,000 students.[23] Cross busing of students each morning requires travel of about 6,232 miles one way, out of a total one way morning mileage of some 15,609 miles. The system's operating budget for this year's transportation is about $1,974,000.[24] Express buses which take students from a central location, such as a school, to another school across the county usually ride about 30 minutes from departure to arrival. Often the white sixth and seventh grade children who are picked up at central stops must ride buses to these areas. Thus, total rides could be 45 minutes to 1½ hours one way. Most black students ride express buses out of the city to schools in the county. Since they live in close proximity to each other, the black students do not ride as long as most whites to get to their express stops. For the economics effected by using the same buses for several trips, departure and return times are staggered.

Some departure buses for elementary school children leave as early as 7 a.m., but most leave between 8 and 9 a.m. Most high school students' buses leave at 7 a.m., with junior high students and elementary students following on later routes. The return buses carry elementary students, then junior high, and then high school students. Because of frequent bus delays, some high school students do not return home until after 5 p.m.[25]

Teachers believe that the bus rides do not produce ill effects on childrens' learning abilities. The bus ride is, on the other hand, an opportunity for students to misbehave and frequent fights take place. Since most buses serve segregated housing areas, passengers are usually students of only one race. Thus, fights generally either involve black students on their buses or white students on theirs. One teacher

[22] Several students stated that it was unusual for black students to visit whites at their homes and vice versa. Some students said they were reluctant to invite black students to their homes because they thought their parents would object. Others said the distances between their homes prevented home visiting between blacks and whites. However, some white students, who had developed interracial friendships through extracurricular activities, did invite their black friends to their homes. Some students reported interracial visiting and telephoning were increasing. Nonetheless, black students explained that there was a degree of peer group pressure against friendships with whites. Similar pressure against friendships with blacks was noted by white students.

[23] There are about equal numbers of black and white students being bused.

[24] The operating expense budget for the entire school system in 1970-71 was about $63,300,000. For this year it is about $71,567,000. One-half of the funds spent on transportation for students traveling over 2 miles are reimbursed by the State. The sources of this year's operating budget are about $967,000 from Federal Impact Funds, $49,877,000 from State aid, and $23,900,000 from county sources (mostly revenue from real estate taxes).

[25] One high school operates a double session. The bus for the morning session departs at 6 a.m. The return bus for the afternoon session leaves about 6:30 p.m.

felt that the bus ride seems to excite the children, so that at first they are slightly harder to discipline when they reach school. Although both black and white students at all school levels have been suspended for discipline problems arising on buses, more black than white students have been suspended.[26]

Many white and black parents interviewed complained of the inconvenience of the early departures of their children, the staggered school schedules, and the long school days. Several parents said they worried that their children might miss the return bus and be stranded in strange neighborhoods. Although both black and white parents expressed concern about the safety of the ride, there have been no serious accidents.

The students interviewed complained of discomforts in riding the buses, and some said they would prefer to walk to school. Others, particularly the younger children, said they enjoyed the rides.

Disciplining Students

A problem mentioned by several black and white teachers is the difficulty many white teachers have in disciplining black students. Black teachers have explained that white teachers are often unused to handling black students, are afraid of them and, therefore, do not discipline them in classes. This leads to lack of respect for these teachers among the black students and causes them to be referred to the principal for discipline.

Several teachers interviewed expressed a desire for more uniform application of rules for student punishment. Many black teachers have said that white students are not punished as severely as blacks. Similarly, white teachers believe black students are treated more leniently than whites.

School Disruptions, Violence, and Crime

Before school opening there were threats from militant black groups of disruption at the two formerly black high schools that had become junior high schools and at various other high schools. Several parents, mostly white, did not send their children to school the first week of the semester for this reason. Their fear was evidenced by the fact that in the early days of the semester, many white parents drove their children to and from school. The disruptions failed to materialize, however, and after the early weeks parents became more confident and white students began to ride buses in substantial numbers.

About three weeks after the start of school there was a rather serious incident in one of the formerly white high schools. This disruption was caused by two white students who had painted in a very prominent area of the school yard "Niggers Go Home". When the black students saw the message, about 50 rampaged through the school yard and halls fighting with white students and smashing windows. Approximately, nine white students, mostly girls, were sent to the school infirmary for first aid, and a few were treated at a hospital. The two white students who caused the disturbance were suspended from school. One was criminally prosecuted and has not returned to school. The other has transferred to a private school. Nine black students were suspended from school for periods of not more than 10 days. Two blacks were prosecuted. Although the entire disturbance lasted only about 20 minutes, most students, black and white, returned to their homes for the day.

In another formerly white high school tensions arose over evening incidents in which some whites, not students, had attempted to drive some black students off the school grounds after a football game. The following school day there were several fist fights between black and white students. Although a local newspaper reported these disruptions as a riot, the school principal stated that the fights had not been widespread, there were no injuries or damaged property, no one was arrested and, contrary to the newspaper accounts, police were not called.

Teachers and principals interviewed did not report a substantial increase in petty crime. A junior high school principal, who had formerly headed an all-black junior high school, thought there was far less crime in the integrated school than in the black one. In the black junior high school there had been a concentration of students from low socioeconomic levels who seemed prone to commit crimes against each other. In his opinion, the wide mix of socioeconomic levels in integrated schools

[26] The bus driver is the only supervisor on the buses.

has reduced the likelihood of crime. It had been feared by some white parents that black students would commit crimes against whites. But several principals and teachers felt race was not an issue in the school crimes. They expressed the view that if students are inclined and tempted, they will steal without consideration of the victim's race. In the early days of the school year, there were complaints of shakedowns and extortions (blacks against whites) at junior high schools, but they have largely stopped, suggesting that these crimes were a transitional problem.

Teachers' Attitudes Toward the Plan

The school board was also under court order to fully desegregate its faculty by September 1971. Much of this desegregation had occurred during the 1970-71 school term. The desegregation faculty ratio required for 1971-72 is about 80 percent white and 20 percent black, per school. The board ordered that for the 1971 school year all teachers were to be transferred to the schools to which their students, or the majority of them, had been assigned. The teachers were to teach the same grade level and subjects as in the previous year. These requirements minimized problems of teachers' reassignments.

Principals were allowed to select heads of various departments in their schools. Several teachers who had been department heads of black high schools were not made heads of departments at their new schools. Although they retained their former salaries, their demotions have created bad feelings among black teachers.[27]

Students' and parents' relations with teachers, both black and white, have been explained to be more a function of personalities than of race relations. Some black teachers, however, complain about problems in dealing with the few white parents who act as if the black teachers are not qualified to teach.

Several white teachers, as well as experiencing discomfort in disciplining black students, have expressed resentment at being transferred to schools which are often far from their homes and sometimes in neighborhoods in which they feel ill at ease. Various white teachers have also complained about having to teach students of widely differing abilities in the same classes. Several white and black parents suggested these dissatisfactions are sometimes reflected in harsh treatment of students of both races.

Attitudes of Black and White Parents

While not stating that they favor integrated schools, many white parents are resigned to integration, as required by law, and are not attempting to thwart it. Some spoke of benefits for black and white children attending integrated schools. These parents feel it is important for children of diverse backgrounds to learn to get along with one another.

Black parents are strongly in favor of integrated schools and support the plan, although they often express dissatisfaction about the amount of busing required of their children and the closing of their high schools.

Evidence of white parents' acquiescence to integration is seen in continued widespread involvement in PTAs, even in schools in black areas. Since the schools are 80 percent white, white parents dominate the PTAs. Black parents are, for the most part, less active in PTAs, particularly at schools in white neighborhoods. Some black parents have said they don't feel welcome in the formerly white school organizations. In actual numbers, there were more black and white members of PTAs when children attended neighborhood schools. In one formerly black junior high, however, black parents are more involved in school activities then previously, apparently because of their desire to make sure their children are treated fairly.

[27] In addition, black principals and teachers have expressed the fear that they are being eased out of the system, primarily by being appointed to new administrative jobs. Moreover, teachers are now being selected for administrative jobs, such as deans and principals, on the basis of subjective qualifications relating to their likelihood to succeed. Many black teachers believe that this opportunity for subjective evaluation will promote discrimination. While there is only one black high school principal, whereas formerly there were two, there are more black junior high and elementary school principals than before as well as more black deans and assistant principals. Deans and assistant principals are in the pool from which principals are appointed. Thus, blacks may have a better opportunity for important administrative positions.

PUBLIC SCHOOL DESEGREGATION IN PONTIAC, MICHIGAN

Demography

Pontiac is a manufacturing city, located approximately 20 miles north of Detroit, with a total population of 85,279 of which blacks number 22,760. A substantial number of residents work in three General Motors plants located in the city. School enrollment is 23,000, of which 7,942 are blacks. In the past 10 years, the black population has increased 60 percent while the white has declined by almost 10 percent. The percentage of blacks among Pontiac's school population has climbed from 35.8 percent in 1969-70 to 36.8 percent in 1970-71 to 37.31 percent in 1971-72. In addition, Pontiac's student population is 5 percent Spanish surnamed (primarily Mexican American).

The Pontiac School System includes 27 elementary schools, six junior highs, and two high schools. One school, the $6 million "Human Resources Center", was designed along the "educational park concept" and has 1,800 students. The school district covers an area of 39 square miles. While the district's area is approximately twice the size of the city itself, 90 percent of the population lives in Pontiac.

A History of Racial Conditions in Pontiac

Pontiac is a city with a history of racial problems. In a 1968 report entitled, "A Public Inquiry Into the Status of Race Relations in the City of Pontiac, Michigan", the Michigan Civil Rights Commission stated:

> Pontiac is a city divided by racial and ethnic prejudices and fears. Negro and Spanish American citizens are excluded from full participation in employment, housing, education, and social services. They are often denied equal protection under the laws and equal access to jobs and law enforcement agencies. The physical isolation which has resulted between white and nonwhite citizens has led to a communications gap of staggering proportions. Civil and governmental leaders have little concern for, or understanding of minority group problems. Negroes and Spanish Americans grow more and more distrustful of a community they feel is trying to contain them.

These problems have been reflected in Pontiac schools, as in most other aspects of community life. Racial incidents have closed various Pontiac schools periodically over the last 5 years. In its 1968 report, the Michigan Civil Rights Commission stated "residential areas of the City of Pontiac are clearly segregated, with non-whites confined to a slowly expanding ghetto in the southern part of the city. Although Pontiac adopted a 'Fair Housing Ordinance' last year, conditions remain as much as they have been for the past two or three decades." These conditions remain today, with more than two-thirds of Pontiac's black population living within three of the city's 16 census tracts.

The State civil rights commission found similarly segregated patterns in the schools: "So far, according to witnesses, the School Board has taken virtually no action toward desegregation. In fact, some school boundary lines indicate a conscious attempt to maintain racial separation." Such separation remained through the 1970-71 school year, when 1,236 of Pontiac's 1,738 black junior high school students attended two of the city's six junior high schools. These schools, Eastern and Jefferson, had black enrollments of 78.4 and 98.2 percent respectively. In elementary schools during the 1970-71 school year, 2,480 of the system's 4,641 black elementary school students attended six schools that were 93.8 to 99.5 percent black. For preceding years, patterns of racial segregation were even more marked.

While Pontiac's two high schools failed to maintain a racial balance corresponding to the overall high school student population, they were less segregated than the junior high and elementary schools. In 1965, the school board had changed the high school boundaries to increase the black percentage at Northern High School to approximately 15 percent. For the 1969-70 school year, Northern High School,

with a student population of 2,187, was 14.7 percent black, while Central High School, with a student population of 2,143, was 46.6 percent black. Voluntary action to improve this picture was again taken prior to the beginning of the 1970-71 school year by changing the boundary lines for the two high schools. Those already enrolled were not affected by this change since it only applied to incoming high school students. Thus, the present sophomore and junior classes reflect boundary change, while the senior class does not.

Prior to the desegregation order, the Pontiac School System had emphasized the concept of neighborhood schools. A 1964 resolution by the Pontiac Board of Education, for example, stated: "The neighborhood school concept is believed to represent sound educational practice. Pupils will be guaranteed the right to attend the school which serves their attendance area as established by action of the Board of Education." For the 1970-71 school year, approximately 3,500 students were transported to school. While consistently advocating the neighborhood school concept, the Pontiac School Board since 1948 has adopted resolutions recognizing the need for integration in faculties and student bodies.

Faculties also show a history of racial segregation. A 1968 report by the Pontiac School District's Citizen's Study Committee on Equality of Education Opportunity, a group created by the board of education to examine policies, programs, procedures, and practices of education in the district, found: ". . . teaching staffs of the individual schools, with minor exceptions, and the school district in general, is by and large segregated; and, with minor exceptions, racial imbalance of faculties is worsening . . . . The committee finds that in those schools that are predominantly white or predominantly black by student attendance, the school district followed consciously or unconsciously, a 'matching', process; white teachers are assigned to predominantly 'white schools', black teachers to predominantly 'black schools'. Thus, in the 1967-68 school year, half of the district's 218 black teachers were assigned to six of the district's 36 schools. These schools were located in black neighborhoods, and had virtually all black student bodies."

The Pontiac School Board consists of seven members, each having a 4-year term. There are two black members, one of whom does not plan to run for re-election when his term expires this June. The term of the other black member runs to June 1973, but he also does not plan to run again. In the last election, two candidates running on an antibusing platform were elected. In votes on desegregation issues, the board has generally divided along racial lines. For example, prior to a court decision in the Pontiac case, attorneys for the plaintiffs submitted a desegregation plan to the board as a basis for negotiation. The board rejected the plan, and voted 5-2 not to propose a counter plan. The board's attitude, after taking the Pontiac desegregation case all the way to the Supreme Court and losing, was to accept the Court's order without taking one side or the other. Thus, instructions were issued to all school principals not to take sides on the desegregation issue.

Chronology of the Pontiac School Case

Litigation revolving around segregation in the Pontiac School System dates back to a 1958 action concerning site selection for the Bethune Elementary School, which was all-black. In that case the court failed to find evidence of discriminatory site selection.[28]

On February 17, 1970, as a result of a suit filed by the NAACP cooperating attorneys in Pontiac, U.S. District Judge Damon J. Keith ordered immediate integration of Pontiac schools and the submission of a complete desegregation plan.[29]

On February 23, the school board voted 4-3 to appeal the order to integrate the school system by September 1970. In March 1970, the Pontiac School Board submitted two plans to Judge Keith. One called for open enrollment in the elementary schools and boundary line changes on the secondary level. The second plan called for reorganization of schools by grade, instituting schools containing a kindergarten and three other grades, and reorganizing junior high schools to contain one grade each. On April 2, the judge accepted the board's second plan. On April 12, the school board ap-

[28] *Henry* v. *Godsell*, 165 F. Supp. 87 (E.D. Mich. 1958).
[29] *Davis* v. *School District of the City of Pontiac, Inc.*, 309 F. Supp. 734 (E.D. Mich. 1970).

plied to the U.S. District Court for a stay of execution of Judge Keith's order, which was denied on April 30. The board then announced that it would appeal to the Sixth Circuit Court of Appeals in Cincinnati. On May 28, approximately 3 weeks after the Supreme Court's decision in the *Charlotte-Mecklenburg* case, the Appeals Court upheld Keith's order. On July 12, the Pontiac School Board submitted a revised integration plan to Judge Keith, and on August 25 formally filed an appeal with the U.S. Supreme Court. The National Action Group (NAG), an antibusing group headed by Mrs. Irene McCabe, filed suit in U.S. District Court on August 30, 1970, seeking to halt implementation of the busing program.

On September 2, Judge Keith refused an injunction against implementation of the busing order and NAG attorneys filed an appeal with the Sixth Circuit Court of Appeals. On October 26, the U.S. Supreme Court denied *certiorari* to hear the appeal of the Pontiac Board of Education.

Summary of Pontiac Litigation

The case responsible for the Pontiac desegregation order was *Davis* v. *School District of the City of Pontiac, Inc.*, 309 F. Supp. 734 (E.D. Mich. 1970). The plaintiffs, black children residing in Pontiac, alleged that the school district had discriminated in hiring and assignment policies of teachers and administrators and had discriminated against blacks in denying them the right to be educated in the Pontiac School System under the same terms as white students by drawing school attendance lines for elementary schools for the purpose and/or effect of maintaining separate schools for Negro children. Plaintiffs further contended that the elementary, secondary, and high schools in the city of Pontiac operated under a system of *de facto* segregation resulting from defendant's policy of shifting boundary lines and locating new schools in such a manner as to minimize the prospect of achieving maximum integrated schools. While admitting the existence of racial imbalance, defendants contended that historically the policy of the board of education was that all pupils in the district should attend their neighborhood school without regard to race or color, and that housing patterns were responsible for the imbalance.

In his opinion, Judge Keith noted that it was undisputed that Negro children were being deprived of quality education in the Pontiac School System. He found that the Pontiac Board of Education had never considered achievement of racial balance as a factor in setting school boundaries, and that the construction of nine new schools between 1955 and 1963 served only to reinforce segregation patterns. The court found that the Pontiac Board of Education had intentionally located new schools and arranged boundaries in order to perpetuate segregation patterns. The court went on to state that:

> Where the Board of Education has contributed and played a major role in the development and growth of a segregated situation, the Board is guilty of *de jure* segregation. The fact that such came slowly and surreptitiously rather than by legislative pronouncement makes the situation no less evil. 309 F. Supp. 734, 742.

The court concluded that the Pontiac School Board could not use the neighborhood school concept as a disguise for the furtherance or perpetuation of racial discrimination when the school board had participated in the segregated policies. It held that school officials who had located new schools in such a way as to intensify racial imbalance created a situation of *de jure* segregation, and that officials had a duty to eradicate the results of their discriminatory acts. The Pontiac School District was ordered to submit a comprehensive plan for the complete integration of the entire school system, to be accomplished by revising boundary lines and by busing to achieve maximum racial integration. The system also was ordered to integrate its faculties and administrators, and to accomplish these results prior to the beginning of the September 1970 school year.

On appeal, the United States Court of Appeals for the Sixth Circuit, held at 443 F. 2d, 573, 575 (6th Cir. 1971):

> After a thorough review of the record on appeal and upon consideration, we have concluded that the District Court's findings of purposeful segregation by the school district are supported by substantial evidence and are not clearly erroneous.
>
> . . . Although as the District Court stated, each decision considered alone might not compel the conclusion that the board of education intended to foster segregation, taken together they support the conclusion that a purposeful pattern of racial discrimination has

existed in the Pontiac school system for at least 15 years.

The Court of Appeals affirmed the district court's judgment and order and remanded the case to the district court for continuing supervisory jurisdiction.

The Pontiac Plan

As mentioned previously, the plan now in effect in Pontiac does not include high schools, which were integrated by a change in the boundary line between the two high schools prior to the 1970-71 school year. The Pontiac plan also excludes kindergarten students, who attend their neighborhood schools.

All students from first grade through ninth grade are covered. The plan requires every school serving these students to have a black student population of between 20 and 40 percent. Schools approaching a 40 percent black enrollment are not necessarily those in black neighborhoods, and those with a 20 percent black population are not necessarily in white neighborhoods. Students attend their neighborhood schools for kindergarten and grades four, five, and six. For the three elementary school years in which a student is not attending his neighborhood school he is transported to another school.

Elementary schools are clustered in groups of three or four with some schools enrolling primary grade children and other schools enrolling upper elementary grade children. Junior highs are organized so that each enrolls only one grade and draws students from half of the Pontiac School District. Thus, within the Pontiac district there are two seventh grade, two eighth grade, and two ninth grade schools. One school of each pair serves each half of the city and generally feeds into a senior high school serving that half of the city. The plan assures that students who are together in the first grade will probably remain together through the 12th grade. Under the plan, most students will be required to attend six different schools from kindergarten through 12th grade. For example, a student may attend one school for kindergarten through third grade, another from fourth through sixth grades, separate schools for seventh, eighth, and ninth grades, and a sixth school for high school. For other students, the plan entails some variation on this arrangement. The plan requires establishment of a cross-city busing program involving approximately 9,600 students. Students are required to go to their neighborhood school where they are picked up by bus and transported to their assigned school in the morning and returned in the evening. Elementary schools on one half of the city run from 8:30 a.m. to 2:30 p.m., while those on the other half run from 9:30 a.m. to 3:30 p.m. Junior high schools follow a similar schedule. Central and Northern High Schools run respectively from 8 a.m. to 1:05 p.m. and from 8 a.m. to 3:15 p.m. Central has eliminated its lunch hour and study halls due to the shortened schedule.

Transportation

Of the 9,619 Pontiac students bused to school, some 30 to 35 percent are black. Prior to desegregation, approximately 3,500 students were transported by bus. In order to accommodate the extra students transported, the city of Pontiac was required to increase its bus fleet from 50 to 106 buses, of which 91 are in regular use. The average trip mileage per student for the 1971-72 school year is 4 miles in the morning and 4 in the afternoon, taking approximately 20 minutes each way. During the 1970-71 school year the average mileage was approximately 6 miles in each direction. During the 1970-71 school year the Pontiac bus fleet was involved in a total of 27 accidents while from July 1, 1971 through December 31, 1971, the fleet was involved in 25 accidents. According to school officials an increase in disciplinary problems with students riding buses developed at the beginning of the school year and monitors were utilized. These problems have declined steadily, however, and as of late November last year the situation was comparable to previous years. School officials believe monitors are no longer necessary.

Cost of Integration Plan

The school district has estimated that the cost of the integration plan will total $540,000 for the 1971-72 school year. Of this $370,000 is attributable to busing, and $125,000 for remodeling facilities. The total budget of the Pontiac district is $21.7 million. In order to meet these added costs, about 200 teachers were laid off in April 1971. Because teachers

with the least seniority were affected first, a disproportionate number of blacks, who had been hired more recently, were laid off—70 percent of the total, according to school officials. When these teachers were offered an opportunity to return to their jobs in August 1971, many had found other work and less than half came back. Those who returned worked without contracts until October 1971. Although there are now 115 fewer teachers in the Pontiac School System than last year, a decline in school enrollment has kept the student-teacher ratio at approximately the same level. The district has been forced to cut back on some services, such as psychological counseling. An Elementary School Assistance Program (ESAP) grant of $278,000 is being used, in part, to pay personnel involved in the busing program.

Reactions in Pontiac

Recently Pontiac has gained nationwide notoriety as a bastion of resistance to school desegregation. In September 1971, at the beginning of the school year, a number of incidents took place involving the resistance by such organizations as the National Action Group (NAG) and the Ku Klux Klan.

In late August, 10 Pontiac school buses were destroyed by bombs; five Ku Klux Klan members have been indicted. On school opening day in 1971, nine NAG followers were arrested for chaining themselves to the school bus depot gate in protest of the court ordered plan. Other NAG followers picketed schools, primarily those in white neighborhoods, holding signs which said "Nigger, go home" and shouting insults at black children. Some NAG followers blocked school doors, attempting to prevent children from entering. At one elementary school, the principal had to escort black students through a line of jeering pickets. Others boycotted schools and urged their friends and neighbors to do the same. Some white students reported visiting their friends who were being kept out of school to assure them that the schools were safe and that bad publicity about school conditions was undeserved. Mrs. Irene McCabe, chairman and organizer of NAG, claims that those causing violence, shouting racial epithets, and blocking school doors do not represent the views of NAG. NAG claims to be opposed to busing and abandonment of neighborhood schools, not to be against integration. While there are virtually no black NAG members, a NAG spokesman stated that the majority of blacks support NAG's opposition to busing.

According to educators, the incidents at school opening spread much tension, adding to problems which normally exist on opening day and in newly desegregated schools. Students going to an unfamiliar school where they knew no one and were not known and could not be identified by faculty, traveling to a strange part of town, and often attending school for the first time with another race, were already somewhat agitated. Burning school buses and the sight of mothers chaining themselves to the bus depot gate or blocking buses with baby carriages contributed to the agitation. When students had to fight through a picket line and endure verbal abuse the situation was aggravated, according to school officials. As a result, there were a number of incidents during the first two weeks of the 1971-72 school year, involving such extremes as fighting and extortion. A school official estimated that 90 percent of the extortion attempts were black against white. NAG claims that school related crimes rose some 850 percent from the previous year. Particularly, the city's two ninth grade schools and two high schools experienced many racial conflicts. It is difficult to assess the degree to which such conflicts were prompted by turmoil outside the schools, but even students in schools where no picketing occurred expressed anger and resentment over the actions of the pickets. The greatest number of problems occurred in the schools which were being picketed, and the incidents ceased at about the same time that the pickets left. A school official commented that the level of tension at the schools was almost intolerable. Police statistics show that nine-tenths of the school related crime cited by NAG occurred during the first month of classes, the time of greatest turmoil.

A police counselor, who was interviewed, stated that, unlike previous years, every incident was written up by the police. For example, one official stated that white parents started

reporting to the police when their children were bumped on the lunch line. These incidents probably would have been overlooked previously. Further, statistics cited by NAG refer only to reported events which were verified, not to convictions or even prosecutions. School officials also questioned the attitudes of the Pontiac Police Department which has 10 blacks out of approximately 170 members on its force, and which attempted to give a $300 donation to NAG in support of its cause. Now school incidents are down sharply and administrators and principals agree that they are no worse than in previous years. Some principals commented that things are going even better.

Bus burning, picketing, and school boycotting gained Pontiac much publicity. Coupled with this was a Labor Day rally of some 6,000 persons held by NAG, and a NAG sponsored picket line which temporarily halted production at the nearby Fisher Body Plant in mid-September. This succeeded in slowing down other factories, which depended on the struck plant for parts. NAG cites this incident as a display of strength. A factory worker disagreed, claiming that workers in the struck factory were already discontent and would have walked out for almost any reason. He stated that there was a great deal of anger in other factories due to the slowdown.

NAG now claims to have 71 chapters with 20,000 supporters in Michigan, and 10 chapters in other States. Partly as a result of NAG boycotts of the schools, enrollment at the beginning of the 1971-72 year was 2,500 below the number projected. It was feared that the boycott would lead to decreased Federal and State aid to the schools since, under Michigan law, aid is granted on a per pupil basis calculated according to school enrollment on the fourth Friday of the school year. So far, NAG sponsored boycotts have been successful in reducing school enrollment as much as 22 percent below normal for a day or two at a time, but such campaigns have generally lasted only one to two days and have failed to last over a long period of time. NAG's success may occasionally have been bolstered by tactics such as picketing houses of white parents who sent their children to school during a boycott.

As noted, the enrollment of the Pontiac School System has decreased by some 2,500 students, almost all of whom are white. A small number of students are still being kept home from school as part of the NAG boycott. Other factors in the decrease of school enrollment have been transfers to parochial and private schools and removal from the district itself. It is difficult to assess the degree to which each of these factors account for the overall decrease in enrollment. At the beginning of the school year, a group of unaccredited "freedom schools" was opened to accommodate those students whose parents objected to the busing plan. The freedom schools failed to achieve accreditation, and are now decreasing drastically in enrollment and experiencing financial difficulty. NAG claims that it never supported the freedom schools, recognizing that they would not be viable. Although originally more than 2,000 students signed up for the freedom schools, no more than 300 ever attended classes at one time according to the project coordinator, and enrollment now is approximately 175 and decreasing. Pontiac school officials believe that approximately 100 students are being withheld from school. Officials are now in the process of submitting the names of the parents of these children to juvenile court authorities and the children are beginning to return to classes.

While white flight has been a factor in the decrease of school enrollment in Pontiac, it is difficult to measure its effect. The Pontiac School District is surrounded by primarily white middle class communities such as Waterford and Clarkston, which maintain their own systems. They are within the income range of Pontiac residents and would cause slight inconvenience in terms of commuting for Pontiac workers. According to school officials there has been no great exodus of whites or rash of for-sale signs, but a number of white families have been moving out of the city. The fact that the percentage of the black population in Pontiac has been steadily increasing in past years indicates that this white movement is not prompted only by the desegregation plan. Officials noted that most families who desired to move did so prior to the opening of school and since October 1971 there has been a slight

exodus from the Pontiac district. They believe the district has stabilized.

Reactions of Students

While NAG points to alleged crime increases and white flight as the consequences of the school desegregation plan, others believe that desegregation has gone smoothly since the initial problems in September. The majority of principals and students who were interviewed expressed this point of view. When asked about NAG's claim to represent the vast majority of people in Pontiac, one administrator commented:

> The fact that 21,000 students are now attending integrated schools in Pontiac demonstrates that their families are willing to go along peacefully with the court order.

Most of those supporting school integration were enthusastic about the Pontiac plan. Both blacks and whites felt it placed no unfair burden on either group. The only problem mentioned was that children would be required to attend six schools, rather than three, during their school careers. One official stated, however, that there is "nothing sacred about attending three schools." He added that, since most students would stay together as they moved from school to school, only the building would be different. Students would normally have new teachers every year anyway.

Administrators and students believed that the majority of students were somewhat indifferent to the integration plan. They stated that students were more concerned about their personal activities, and that going to an integrated school was not such a major event for students despite the concern of parents. This "indifference" may also reflect the increasing stabilization in the schools, according to an official. After 4½ months of school, students were getting to know their classmates and dispelling some of their fears and misconceptions based on race. A number of students, who reported being literally terrified at school opening and wanting to stay at home rather than attend a new integrated school, said that they had become happy with their schools after the first few weeks and realized that their fears were unfounded. They cited misleading publicity and a few isolated incidents as the cause of their misconceptions. Students also mentioned misconceptions which they had gotten from their parents as the cause of being frightened about attending school against the wishes of parents who would have preferred to enroll them in a private school. One student, whose mother had been arrested for chaining herself to the bus depot gate, expressed continuing fear at attending an integrated school as a result of encounters with black students who called her various names and upon a purse snatching incident.

The greatest number of problems occurred in the two ninth grade schools, Lincoln and Kennedy. Several reasons were given for this:

1. The fact that ninth graders, at 14 or 15 years old, are at a difficult age anyway;
2. The pressures of dating, which often begin around the ninth grade, cause tension and competition among students and anxiety among their parents. When dating becomes a primary topic of conversation, black and white students tend to drift apart as they date within their own circles;
3. Ninth graders have suddenly lost the seniority which they maintained in the eighth grade and are no longer looked up to; and
4. NAG pickets appeared in the greatest concentrations at the two ninth grade schools, and disturbances at these schools reportedly coincided with the presence of the NAG people.

At some schools, extracurricular activities are reported to have tapered off. The fact that black and white students live in different neighborhoods has made it difficult for students to associate after school, although buses are provided for students who wish to participate in extracurricular activities. In many schools, sports teams tend to be either all-white or all-black and spectators are drawn primarily from the communities surrounding the school. Some schools provide transportation for students from other neighborhoods who wish to attend sports activities, but so far the response to this has not been great. An administrator felt that getting students to work together for a common goal, whether winning a football game or presenting a play, was one of the most effective methods of overcoming racial barriers.

At one seventh grade school, students who became increasingly upset by the NAG's publicity, decided to form a group of their own to express support for integration. Their organization, known as "The Group", consists of 30 original members, evenly divided between blacks and whites, who travel to other schools to put on skits and appear before the media. After viewing the skits 1,000 to 1,500 students have signed up as members. "The Group" meets once a week and writes its own material. Its skits attempt to show conditions in a school with racial problems contrasted with a school where students are in harmony. The members have appeared in schools of seventh grade and below. In addition, they have appeared on NBC News and have been interviewed by the national press and local media. Parents of these children have also joined together and meet approximately once a month in different homes to hold open discussions of school problems. Their school, Jefferson Junior High, a formerly all-black school, has been calm throughout the busing turmoil and has reportedly experienced fewer problems than in past years.

Some 300 to 400 parents, evenly divided among blacks and whites, come to PTA meetings and school conferences, according to a school official. An administrator attributed the success at Jefferson to the leadership exercised there in helping to make integration work. He criticized the school board for its lack of leadership.

The Pontiac PTA, which has approximately 7,000 members, supported the plan and has adopted the slogan "Let's make it work." The PTA recently lost several hundred members, and officials attributed this partly to the organization's stand on integration. Parents from one school cluster, consisting of Hawthorne, Alcott, and Bagly schools have joined together and periodically hold meetings to discuss activities and mutual concerns. The PTA is working to promote similar groups in other schools. The PTA also stationed black and white monitors in the schools during the opening days, so that students in a new school could see familiar faces and so that someone would be available to identify disruptive students.

PUBLIC SCHOOL DESEGREGATION IN FORSYTH COUNTY, NORTH CAROLINA

Forsyth County is in northwest North Carolina, in the Piedmont area that lies between the coastal plain and the mountains. It is roughly rectangular in shape and covers 424 square miles. The 1970 population of the county was 214,348, of which approximately 20 percent was nonwhite. Winston-Salem, the principal city in the county and among the larger cities in the State, covers 57.5 square miles and is located in the south central part of the county. Its 1970 population was 132,913, of which 31 percent was black. Less than 10 percent of the county's population outside Winston-Salem is black. In the outlying parts of the county there are several small unincorporated towns.

Pursuant to a special act of the State general assembly and by vote of the people of Forsyth County, in 1963 the Winston-Salem and Forsyth County schools were merged. As of last fall, the Forsyth County School District was the 82nd largest in the Nation. Its total student population is approximately 47,757, of which about 29 percent is black.

History of School Desegregation

In October 1968, the NAACP Legal Defense and Education Fund instituted a suit against the Forsyth County School Board, charging that the system was being operated on a racially discriminatory basis. In a June 1970 decision, the U.S. district court found that in 1969 there were 67 schools in the system with approximately 50,000 students and that of these schools, 15 were all-black and seven all-white. Of the remaining schools, 31 had less than 5 percent of its students of the minority race.[30]

The district court concluded that, despite the racial imbalance of many of the schools, the school attendance zones had been drawn in good faith and without regard to racial considerations. Therefore, the court approved the school board's plan for further school desegregation for the 1970-71 school year. The plan retained geographic zoning and freedom-of-choice transfers, with priority for majority-to-minority transfers and improved racial balance in a few schools. However, the court modified the school board's plan to prevent minority-to-majority transfers, ordered the clustering and pairing of several other black elementary schools with white schools, and required the school board to consider innovative programs to increase contact between the races.

Faculty desegregation in the ratio of about 70 percent white to 30 percent black, which had been achieved in January 1970, was ordered continued, along with continued desegregation of facilities, extracurricular activities, and transportation. The court held that under the proposed plan there would be a unitary school system, despite the continued existence of some all-white and all-black schools. All parties appealed the court's order to the Fourth Circuit Court of Appeals.

Following the decision of the Supreme Court in *Swann* v. *Charlotte-Mecklenburg,* the court of appeals vacated the judgment of the district court. The Forsyth County school case was remanded to the district court with instructions to obtain a new plan for school desegregation for the 1971-72 school year that would comply with *Swann.*[31] The Fourth Circuit directed that the district court and the school authorities consider the use of all techniques for desegregation, including pairing or grouping of schools, noncontiguous attendance zones (satellite zones), restructuring of grade levels, and the transportation of pupils. The district court was warned by the court of appeals that if it approved a plan achieving less actual de-

[30] *Scott* v. *Winston-Salem/Forsyth County Board of Education* 317 F. Supp. 453 (M.D. N.C. 1970).

[31] *Scott* v. *Winston-Salem/Forsyth County Board of Education* 444 F. 2d 99 (4th Cir. 1971).

segregation than could be achieved under an alternative proposed plan, it must find facts that make impracticable the achievement of a greater degree of integration.

Complying with the court of appeals and district court orders, in July 1971 the school board submitted a new plan to the district court, which was approved by the court without modification. At the time the proposed plan was filed, the board also submitted a resolution urging the court to reject the plan. In its resolution the board reported that though the proposed plan was the least expensive, least disruptive, least burdensome, and most equitable plan that could accomplish racial balance in the schools, it was not a sound or a desirable plan because the residential pattern of Forsyth County would make its fulfillment impossible without massive and expensive busing.

Following the district court's approval of its plan the board applied to Chief Justice Burger, as the Supreme Court Justice authorized to issue temporary restraining orders applicable within the Fourth Circuit, for a stay of the Fourth Circuit's July 1971 order and for a stay of the subsequent order of the district court.

On August 31, 1971 Justice Burger denied the board's application for stays.[32] The Chief Justice cited the tardy filing of the application for stays, the imminence of the start of the school year, and the failure of the school board to explicitly describe the burdens of transportation of students as the reasons for his denial of the stays.

Together with these reasons, Justice Burger also wrote an inchambers opinion, which usually does not accompany a denial of a stay, explaining his view of the applicable law. It appeared to the Chief Justice that the district court and the school board had misread the *Swann* opinion. He suggested that the school board was wrong in believing it had been required to achieve a racial balance in all schools.[33]

[32] 404 U.S. 1221 (1971)

[33] It should be noted that the Chief Justice's opinion is not an authoritative interpretation of *Swann* since the Chief Justice's decision and opinion were issued in his individual capacity to deny a stay and did not have the agreement of the other members of the Court.

On October 4, less than 6 weeks after the start of the school year, Judge Eugene A. Gordon of the district court, without any prompting by the school board, indicated by letter to counsel for the board that it could submit to the court a revised plan that would decrease the amount of busing on major highways required of pupils in grades one through four. The opportunity given by the court for further modification of the plan caused considerable community pressure for change and made adjustment to a new school year much more difficult. The court's unsolicited suggestion for a new plan added to the uneasiness of parents and students about complying with the plan. The school board exercised leadership in resisting community pressure to modify the plan to reduce the amount of cross-busing. The board retained the plan largely to avoid further disruptions in the midst of a school year and because it was uncertain as to what the district court considered necessary to create a unitary school system.

In light of Chief Justice Burger's opinion and in response to the board's August motion for reconsideration of the plan, the district court on December 3, 1971 issued an order permitting the school board to submit by March 15, 1972 a plan for 1972-73 that would reduce the amount of integration in the school system. The court informed the board that the plan need not result in any particular degree of racial mixture in any school in the system. The prospect for reduction of the amount of integration this school year has caused considerable uncertainty among students, teachers, and parents and has helped those who oppose the plan to maintain a campaign against it.

The Current Desegregation Plan

Under the plan the school system is divided into primary schools consisting of grades one through four, elementary schools with grades five and six, and three different levels of secondary schools divided as follows: first level, grades seven and eight; second level, grades nine and 10; third level, grades 11 and 12.

Attendance at the primary and elementary schools is determined on the basis of geographic zones, and these schools feed into the upper grade schools. Through the feeder system a student knows from his place of resi-

dence what school he will attend for each grade. Under the plan, those assigned to the same school in the first grade are assigned to the same schools through all 12 grades, thereby allowing a student to travel with other students with whom he began. It is hoped this arrangement will ease students' adjustments to new schools, since they will already know many fellow students.

Under the plan, two formerly predominantly white elementary schools, now serving grades first through fourth, are grouped with a school formerly predominantly black now serving grades fifth and sixth. The pre-fifth grade pupils residing within the attendance zones of the grades-five-and-six school (most or all of whom are black) attend for the first four grades one of the grades-first-through-fourth schools along with the pupils (most or all of whom are white) residing in the attendance zone for that school. For grades fifth and sixth, the predominantly white pupils residing within the attendance zones of the two first-through-fourth-grade schools attend the fifth and sixth grade school, along with the predominantly black pupils residing within the attendance zone of that school.

Following completion of the sixth grade, students go to the seventh and eighth grade centers, which were formerly predominantly white schools. From there, students attend ninth and 10th grade high schools which, before implementation of the plan, were for the most part predominantly black. Thereafter students attend 11th and 12th grade senior highs, which were formerly predominantly white schools.

Two formerly black elementary schools have been converted to other uses because of the plan. In addition, the formerly black high school and a formerly white high school have been converted to ninth and 10th grade schools.

Elementary enrollment in the system is 29.98 percent black. As of the 10th day of the school year, the percentage of blacks in the elementary schools ranged from 20 percent at one school to 41.07 percent at another. The enrollment in grades seven and eight throughout the system is 27.91 percent black. As of the 10th day of school, the enrollment in these grades ranged from 20.44 percent black at one school to 36.86 percent black at another.

The enrollment for grades nine and 10 throughout the system is 27.38 percent black. As of the 10th school day, the enrollment for these schools was 18.60 percent black at one to 34 percent black at another.

The varying percentage of blacks in the schools forms no pattern suggesting their former racial makeup. For example, the first-through-fourth-grade school which is 41.07 percent black was formerly predominantly white, while others which are about 25 percent black were formerly all-black.

To achieve the racial ratios required by the plan, approximately two-thirds, or about 9,250, of the black pupils are required to attend schools outside their neighborhoods. About one-third, or approximately 11,250, of the white pupils are required to attend schools outside their neighborhoods.

The school board has justified the plan as being the only feasible way to balance, as nearly as possible, the time all pupils have to spend on buses. It is explained that it takes a long time to pick up a bus load of pupils in an outlying area and transport it to an outlying school because of the distances between residences and the school. In contrast, a bus load of those who are centrally located can be picked up and transported to the same school in about the same time. In addition, the school board has found there is no other practicable way to achieve the desired racial balance, since approximately 29 percent of the pupils of the school system are black and the great majority of them are centrally located.

Transportation

In the 1970-71 school year approximately 22,300 elementary and secondary students were transported to school, primarily because they lived further than 1½ miles from their schools. Implementation of the current plan necessitates transportation of between 11,000 and 12,000 more. This year about 32,220 students are being bused.

The average daily miles traveled per bus in 1970-71 was 37. This year it is 51. The total bus miles traveled in the 1970-71 school year was 1,803,864. This year it is estimated it will be 3,700,000. In addition, many senior high school students drive their own cars to school. A substantial number of them are required to

drive many more miles than would be necessary on a neighborhood school basis.

The current system is utilizing 366 buses which is 75 more than last year. These buses are required to run double routes in the morning and afternoon. Because of a shortage of funds for bus purchases, the school district is using more than 100 vehicles that are a dozen or more years old and have been discarded by other school districts. Students who are 16 years of age or older and adults are the salaried bus drivers. They are required to pass a State-administered examination to qualify. Buses in outlying areas pick up children in the county, bring them to the inner-city and return other students to the county, thereby completing two routes.

Studies from the superintendent's office show that the average time spent on a bus by students involved in cross-busing, who would not ride a bus under a neighborhood school plan, is 80.24 minutes for a round trip. The length of time of travel of a loaded school bus on a one way trip ranges from a high of about 69 minutes to a low of about 2 minutes, with the average being about 40 minutes, excluding the time of travel to central loading places. The longest distance traveled by a student is 29 miles each way.

The total budget for this years' school operations is just over $37 million.[34] Out of this some $1.4 million (over 3 percent) will be spent on transportation, but it is not known how much of the total transportation expense will be for busing for integration. The superintendent estimates that to eliminate staggered school schedules, necessitated by double routing of buses, the school system would need an additional 184 buses, costing approximately $1,453,600.

Last year the school system was $1.3 million short of revenues it believed necessary to offer a sound education program, irrespective of transportation. While some extra State aid has become available to cover transportation expenses, the local share of the total cost has increased by more than $360,000, principally because under North Carolina law the local district is responsible for initial purchase of school buses, and because the State makes no provision for salary supplements for adult drivers.

Data collected by the superintendent's office indicate that there are an average of 294 bus trips per day on interstate highways and other four-lane expressways. These buses travel on interstate highways and expressways approximately 1,963 miles per day, carrying some 8,500 pupils, most of them black, in grades one through four. Buses loaded with students travel in 65-miles-per-hour zones at a speed of 35 m.p.h. some 1,114 miles per day. Despite repeated attempts by the board to have the State highway commission post signs on these roads to warn other drivers about school buses, the highway commission has refused to accept any responsibility. The U.S. Department of Transportation similarly has not taken any action, holding the position that school buses should not use such highways.

Proposed Modifications of the School Plan for 1972-73

The plan proposed by the school board for 1972-73 would return to neighborhood attendance zones for the first six grades. This change, it is expected, would eliminate the transporting of about 4,000 elementary grade pupils and would shorten the required transportation distance for about 4,200 other elementary pupils.

The proposed plan would retain a 6-2-2-2 grade structure. For the first six grades the attendance zones would be drawn in favor of racial integration wherever possible. Any pupils desiring to make majority-to-minority transfers would be permitted to do so, provided the transfers would not result in overcrowding in excess of 10 percent of the normal capacity of the school to which the transfer is made. Free transportation would be provided to transferees on the same basis as to other pupils. With this modification of the current plan, much expressway and highway busing would be eliminated.

The board's proposed plan would retain the current system for the seventh through 12th grades. The anticipated racial ratio in the secondary schools would range from 20 percent black-80 percent white to 37 percent black-63 percent white. At the elementary level it is expected that there will be 20 majority white

[34] Roughly 68 percent of the school district's funds come from State sources, about 20 percent from county taxes, and the remainder from Federal and other sources.

schools, one majority black school, and eight all-white and eight-all black schools.

Two members of the school board dissented from the majority proposals for modification of the current plan and submitted an alternative plan to the court. The minority has objected to the majority plan because for grades seven through 12 there would be about as much cross-busing as there now is.[35]

To avoid cross-busing of any students the minority plan provides for a return to a 6-3-3 grade structure. Under the 6-3-3 plan there would be no staggered school openings and closings and no student would board a bus prior to 7 a.m. Attendance at all schools would be determined on a geographic basis. There would be no busing on high speed highways.

Despite the use of neighborhood attendance zones the minority claims there would not be a "material difference" between the amount of integration achieved under 6-2-2-2 plan and that achievable under the minority plan. Under the minority plan all but one senior high would have "substantial" integration of between 23 percent to 39 percent black. The one would have only a 2 percent black population. There would be one all-white junior high and three all-black junior highs.

At the elementary level the minority plan would result in about 20 majority white elementary schools, one majority black school, eight all-white schools, and eight all-black schools.

The majority plan would create at the elementary level 20 majority white schools, one majority black school, and eight all-white and eight all-black schools. The minority plan would create the same number of majority and one race schools at the elementary level as would the majority plan. In addition the minority approach would lead to the creation of four one race junior high schools.

The minority plan has an alternative approach for elementary schools which involves clustering eight schools, similar to the clusters ordered by the court for the 1970-71 school year. With the cluster plan, there would be 26 elementary schools which would be majority white, one which would be majority black, five all-white, and five all-black.

Therefore, the implementation of the cluster plan with the 6-3-3 arrangement would result in a reduction by six of the number of one race schools at the elementary level that would exist under majority or minority plans. The four one race junior highs would remain with the cluster arrangement.

The 6-3-3 plan also includes provision for majority to minority transfers up to 10 percent in excess of a school's normal capacity, with transportation provided when appropriate. The minority plan, like the majority plan, would create a feeder system, with the elementary schools feeding into designated junior highs and those into high schools.

It is anticipated by the school board, the school administration, and the community that one of these proposals will be accepted by the court. The plaintiffs of the school desegregation suit have announced that they will appeal to higher courts any order that will result in less integration. Thus, there is likely to be great uncertainty and tension about school integration for many months to come.

Community Reaction

The current school plan was devised by the staff of the superintendent's office, without substantial consultation with community groups. After the plan had been approved by the school board, it was submitted to the court and made public. The plan has drawn criticism from large segments of the black and white communities.

White opposition to school desegregation in Forsyth County has been strong for many years. In January 1970 faculty desegregation was achieved on an approximately 70 percent white to 30 percent black ratio for each school. There were many meetings of white parents protesting the integration. A white organization called the "Silent Majority" raised a substantial amount of money to fight faculty integration and other integration efforts.

In the spring of 1970, when the district court approved the school board's desegregation plan, there was considerable white opposition to the required clustering of several black ele-

[35] The minority points out that under the 6-2-2-2 plan there would be 147 loaded bus trips of 4,250 students traveling 982 miles on interstate expressways each day. Under the 6-2-2-2 plan the minority reports, 50 to 60 buses would begin picking up children before 7 a.m. to reach school by 7:55 a.m. For some children, the one way ride would continue to be about 1 hour and 20 minutes under a 6-2-2-2 arrangement.

mentary schools with white elementary schools. The "Silent Majority" and other white groups were active in opposing these changes. The opposition generally took the form of meetings, large scale attendance at school board meetings, letters to the editors, comments on radio and television, and other forms of verbal protest. There were also some student boycotts of schools. In the high schools and junior highs integrated through clustering and other desegregation techniques there was, in 1970-71, much tension throughout the year and several "racial" incidents, fights, and disturbances.

After the current plan was disclosed, the white opposition again expressed itself through meetings, attendance at school board meetings, and use of the media. White objections to the plan have centered primarily on the busing of fifth, sixth, ninth, and 10th grade white youngsters to formerly black inner-city schools. The white opposition has argued that it is unfair and unnecessary for their children to be bused long distances into black neighborhoods. In the early days of the plan, white resentment also focused on the change of one of the senior high schools with a student body that was predominantly affluent white to a ninth and 10th grade school.

Whites and blacks frequently complained to Commission staff about the long bus rides which lengthened their childrens' school days, and inconvenienced all the family because of staggered school openings and closings. Some children must board school buses at 6:50 a.m. to get to school by 7:55 a.m., while others in the family may not leave until after 8 a.m. Returns from school may be similarly spread out.

The fears of busing that have been expressed seem to center around two problems: The fact that the system seems to use too many antiquated buses that may be unsafe and the fact that parents feel that if something happens to their child at school in a remote area of the city it would be difficult for the parents to be on the spot at once.

The "Silent Majority" and a group that developed after the start of the school year, "Citizens Against Busing", have presented the only organized white opposition to the current plan. People in "Citizens Against Busing" are primarily those whites who live in the far reaches of the county whose children ride the longest distances to the inner-city schools. Both of these groups conduct regular meetings in the community, trying to increase support for their positions.

In the early days of the 1971-72 school year white parents were reluctant to send their children to schools in the black area. Many brought their children to school and often remained throughout the day. Many of these parents volunteered to help in the schools as teachers' aides, in the health clinics, in the library, and in other areas. Despite the fact that there have been no disturbances in the schools and the students have been interacting freely, many of these white parents have continued to give daily volunteer service in the formerly black schools. There are also a considerable number of white parents volunteering in the schools in the white areas. A few black parents also act as volunteers in the schools.

Membership in the PTA and in other school organizations has suffered substantially this year. It has been difficult for parents who have children in different schools to join several PTAs. Black parents have also had difficulties in attending meetings in the white areas and many white parents fear going to the black sections. There have been a few attempts by principals to meet with black parents in their neighborhood, but these have drawn little response from the black community.

Since the announcement of the plan the white opposition has been far more organized and vocal than the black. The black community's opposition to the plan has primarily concerned the long distance busing of black students in grades one through four to county schools. The blacks have maintained that the burden of busing, in terms of the number of years students must be bused out of their neighborhoods, should be borne equally by blacks and whites. Instead, blacks are bused out of their area for approximately eight of their 12 school years, while whites are bused out of their areas for only four of their 12 school years. Commission staff also heard complaints from black parents and students about the formerly all-black senior high school, which had been an important center of pride and identification to the black community, having

been converted to a ninth and 10th grade school.[36]

After the first weeks of the school year black opposition subsided substantially. As a result of implementation of the plan, many of the formerly black schools have been improved in terms of facilities, supplies, and access roads.

White Flight

To avoid integration some whites have left the county but the number has been very small. The superintendent's office can make no estimate of the number who have left the county for this purpose. About five or six hundred have left the public school system for private schools. Most of those who left have gone from fifth, sixth, seventh and eighth grades—the years when white students would go to formerly black schools. Two new private schools have opened in the county and the previously existing private schools have expanded their enrollments. The superintendent's office seems to think, however, that there has been a leveling off of the number leaving the public school system for private schools. In fact, a few schools have had students transfer from the private schools back to the public schools, as parents and students have come to see that the school system is functioning well.

There appears to be a substantial segment of the white community which feels that the school system is operating quite well, that the quality of education has not deteriorated, and that the reorganization of the grade structure of the schools has been beneficial. Many parents, both black and white, recognize the positive value of school integration, especially at an early age, as a preparation for living in an integrated society. One white mother said: "I hate the busing, I really hate it. But to return at this point to all white or black schools would be a disaster."

Adjustment of Students to the Integrated Schools

In late August 1971 all schools held open house to help the adjustment of students to the integrated schools. Parents and students visited their schools and met with the principal and teachers. The superintendent's office also sent memoranda to all school principals urging them to be aware of the special needs and feelings of those students coming to their school for the first time. The memoranda stressed that involving students in the school's academic and social activities in meaningful and useful ways must be of vital concern to all school personnel.

To further aid adjustment to integration, a human relations specialist works in the superintendent's office and human relations specialists work in the junior and senior high schools. In the summer and throughout the school year they have conducted seminars to aid students and teachers in their relations with people of different races and backgrounds.

As for participation in extracurricular activities, the superintendent's office required that traditions and rules for admission to various clubs, teams, or other extracurricular activities be relaxed to encourage participation of minority students. The school board established a policy requiring any student who held a position of school leadership, either elected or selected, or who was a member of a school organization, to retain that position in the school to which he was assigned for the 1971-72 school year. The board's rule further required that any group representing the student body, such as cheerleaders and student government, have an adequate representation from the minority race. As a result, in several schools there are black and white co-presidents and expanded cheerleader and athletic squads.

Blacks have been participating in all types of extracurricular activities, but particularly in sports. The school administration believes that black participation in athletics has done a great deal to improve feelings between black and white students generally and has led to friendships among blacks and whites involved in the same team or activity. Buses are provided to transport students who participate in extracurricular activities after school. Buses are not provided to bring spectators to activities. There have been some complaints from students who have difficulty obtaining their own transportation for these activities.

An assistant supeintendent has described the interaction of blacks and whites in the high schools and senior high schools as phenomenal.

[36] The school board grounded its decision for changing this school and a former white high school to ninth and 10th grade schools upon the inadequate size of the facilities and their inconvenient locations.

The superintendent's office reports that there have been fewer disturbances and problems this school year than in the past several school years. There have been no serious confrontations, no riots, and no occasions for calling police to school grounds. There was one small walkout of white students at a junior high. There have been very few complaints of fights between blacks and whites.

The superintendent's office has received some complaints from black students that they are more severely disciplined by white teachers than are white students. By percentage, more black students have been suspended from school than white students. The superintendent's office reports, however, that the number of suspensions of blacks or whites has not been higher than in other school years. It appears to the school administration that students are making an attempt to work out their problems through discussions and conferences.

The Commission staff found that students have generally adjusted well to integrated schools. The staff first observed blacks and whites through fourth grade youngsters interacting freely in their classrooms and other school areas. Their teachers, black and white, interviewed by Commission staff members believed that at these early years the children treated each other as equals and without racial distinctions. These teachers did not believe the long bus rides required of many of the children has had an appreciable effect on their behavior or learning abilities, although loading and unloading several shifts of buses have created an additional burden on school personnel.

Students at seventh and eighth grade levels interviewed by Commission staff reported a number of fights between black and white students in school and on the buses. They described these incidents without apparent concern or even hostility. Many children were even proud of the number of fights in which they had been involved. Since the teachers and the principal seemed equally unconcerned about these fights (which did not involve injuries) and the atmosphere of the school seemed cheerful and conducive to learning, it is possible that the basis for such fights is that seventh and eighth graders are at an extremely active age.

Students in the ninth and 10th grades at the former black high school, Atkins, and in the 11th and 12th grades in another school had a variety of opinions about the current school plan and its proposed modifications. The white students noted to Commission staff that they were surprised, relieved, and in some cases proud, that the school year has progressed without serious racial problems at their school or at other schools.

Several white students at Atkins said they had been afraid to come to school at first, because of the publicity that blacks would cause trouble when whites integrated their former high school. In contrast to the predictions of many white and black opponents of the plan, there has been no serious trouble at Atkins. The principal described the students as having "missionary zeal" in working toward a harmonious school year. The only racial fight that has occurred took place in March. A black student and a white student quarrelled over obtaining the same seat in the school auditorium. No other students joined the fight.

Similarly, in another ninth-10th grade school recently there was a possibility of black students boycotting classes in protest over a basketball award made to a white student. The black students believed the award should have been given to the top black player. Despite the tension among blacks throughout the school system after the distribution of awards, the boycott effort was quelled by the influence of human relations workers.

The senior high school visited by Commission staff in the past 3 years had had more racial fights and disturbances than any other school. This year, however, there have been far fewer difficulties than in previous years when the school was less integrated. Moreover, the school won the State football championship for the first time. Moving toward this accomplishment apparently made the students anxious to maintain good relations and to overcome racial tensions.

Several white students from the ninth through the 12th grades said that they would prefer to be able to go to the schools they had expected a year ago to attend which generally meant their neighborhood schools. They explained this preference primarily on the grounds of being with friends who have been

assigned to other schools and fulfilling long held plans for participation in a particular school's activities.

However, most of the white students, including those preferring to go to other schools, thought integration was beneficial because it was enabling them to learn how to get along with people of different backgrounds. Many white students said they had made friends with some black students although it was unusual for their black friends to visit them at their homes. The distances between their homes seemed to be the prime factor in deterring home visiting, though fear of parental disapproval also was commonly mentioned.

Most of the white students interviewed believed that parents were overly concerned with racial differences. They maintained that if their parents left them alone they could relate satisfactorily in school to blacks.

Few white students interviewed believed the presence of blacks in the schools had had a negative effect on the level of instruction or their academic achievement. Most blacks are in the less advanced and difficult academic courses and, therefore, have not had an influence in the more advanced classes. Many white students said the blacks made their courses more engaging because they introduced different reactions and ideas.

Some black students expressed a preference for predominantly black schools. One of the educators interviewed suggested that this feeling is an outgrowth of their sense of inferiority, heightened by daily contact and competition with whites who previously had had better academic preparation.

Other black students interviewed, especially the 11th and 12th grade black students, expressed a preference for integrated schools. They believed that through integration they would receive the best facilities, supplies, equipment, and instruction. Many black students also stated that integration was a good thing because it was important for blacks and whites to learn to get along with each other.

The students, black and white, indicated that generally it didn't matter to what race a teacher belonged, that a teacher's rapport with the students was more a matter of personality than race relations. However, some white students said that some white teachers let the blacks get away with too much undisciplined behavior. Some black students felt white teachers disciplined them unfairly or favored whites in classroom work.

Teachers' Attitudes

In public discussion of school integration the superintendent has taken the position that he is an agent of the board. Since the board recommended that the court reject the plan, he has not publicly supported it. Members of his office, however, have expressed optimism about the new plan. The superintendent's strongest support has come from statements that the present grade structure is the best for good education as well as integration.

Teachers interviewed by the Commission staff were generally pleased with the way the current plan was working out. The teachers were particularly enthusiastic about the effects of having limited grade centers. The limiting of grades at the schools has enabled the staff to use group teaching methods and other innovative techniques. In addition, seventh and eighth graders, isolated from older children, seem to react better toward each other, are easier to discipline, and apparently are more interested in their work. A similar effect has been found in ninth and 10th graders isolated from more advanced students.

In the secondary schools some white teachers interviewed expressed difficulty or uneasiness about handling black students—a type of student whom they had not previously taught. Some white teachers spoke of increased discipline problems in class because of the black students. Some black teachers indicated that some white teachers either disciplined blacks more severely than whites or let them have too much freedom.

Secondary school teachers and principals interviewed believed it was too early to tell what effect, if any, integration was having on the academic achievement of black and white students. The school administration has not released any statistical information concerning achievement levels because of the likelihood of inaccuracies arising from the brief period for collection of information. Although the school system does not use any "tracking system" for classroom assignment, especially bright and

particularly slow students at almost all grade levels are placed in classes designed to aid them.

Teachers interviewed feel strongly that the current plan should be retained at least for next year. They believe it would be disruptive to students and teachers to switch school plans twice in 2 years. Many teachers were reassigned in January 1970 for integation, transferred in September 1970, and transferred again in September 1971. These teachers are tired of being shuffled around and of having to adjust to new schools and students so often. The teachers also believe frequent reassignment of students hampers their adjustment to the new year's school work.

In addition, teachers interviewed believe that it is best for students to be integrated as early as possible. The teachers find that at the young ages the students interact most freely. Moreover, by integrating in the very early years it may be possible to reduce the large gap between white and black students' achievement levels in higher grades.

The teachers interviewed believe that it is very difficult to start integration in the seventh grade, as would result for many children if the school board's proposed plan is adopted for next year. The seventh, eighth, and ninth grade pupils tend to have difficulty with developing study habits and self-discipline, without the additional burden of a first adjustment to being with students of different backgrounds. Therefore, the teachers interviewed were critical of the proposed changes for next year.

The attitudes of these teachers are evidently shared by other teachers. In a sample of teachers' opinions taken by the school board, a majority of teachers favored retention of the current plan. Similarly, a poll of administrators, principals, teachers, guidance counselors, and librarians conducted by the North Carolina Association of Educators indicated that the majority of those questioned favor retaining the current plan instead of adopting either of the alternatives proposed to the court.

In a newspaper article concerning the results of th poll, teachers are reported to have said: "We feel it is best to integrate in the early grades from the educational and emotional standpoint to teach in a racially balanced school rather than a predominantly black or white school."

PUBLIC SCHOOL DESEGREGATION IN CHARLOTTE-MECKLENBURG, NORTH CAROLINA

Introduction

The city of Charlotte is located in Mecklenburg County, North Carolina. The county is in the south-central part of the State near the South Carolina border and has a population of 354,656 (an increase of 30.3 percent since 1960), and covers an area of 550 square miles. Almost 25 percent of the county's population (85,527 persons) are members of black or other minority groups. The city is a major retail center and views itself as rivaling Atlanta as the trade center of the Southeast. Its population is 241,178, of which 73,891 is nonwhite.

Mecklenburg County, including the city of Charlotte, is served by a single school district, the 39th largest in the Nation. It includes 104 schools and in December 1971 had 79,557 students of whom 24,890, or 31.29 percent, were black. The system employs a total of 4,034 on its instructional staff and had a 1970-71 school budget of $66 million.

History of Desegregation of Charlotte-Mecklenburg School System

In 1955, a year after the *Brown* v. *Board of Education* decision, the three school systems of Charlotte-Mecklenburg, Winston-Salem, and Greensboro, North Carolina announced a freedom-of-choice plan. Under the Charlotte-Mecklenburg plan a few black students began attending integrated schools for the first time. In 1962 the school system began a program of geographical assignment of students in five schools but continued the freedom-of-choice plan in the remainder of the system.

In 1965 a Federal district court found Charlotte-Mecklenburg in compliance with desegregation requirements, a decision affirmed by the Fourth Circuit Court of Appeals.[37]

In 1969 suit was again brought against the Charlotte-Mecklenburg School System to compel desegregation. At this time the school board took a number of steps toward desegragating the schools including: closing a number of all-black schools, redrawing school zones, desegregating the faculty, and reassigning some black students from overcrowded black schools. Federal District Court Judge James McMillan found, however, that as of November 7, 1969, 57 of Charlotte-Mecklenburg's 106 schools [two more than in 1971] were still racially identifiable as white and 25 were racially identifiable as black, nine being all-white and 11 all-black. The remaining schools were not racially identifiable.

On February 5, 1970, Judge McMillan issued an order calling for complete desegregation of all schools in the Charlotte-Mecklenburg School System.[38] Immediate implementation of Judge McMillan's order was partly stayed by the Fourth Circuit Court of Appeals on March 5, 1970. On May 26, 1970, the court of appeals vacated the order with respect to the elementary schools, and remanded the case to the district court for reconsideration of further plans. The U.S. Supreme Court, on June 29, 1970, agreed to hear this case, but directed that the district court order be reinstated pending these proceedings.[39] Thus, Judge McMillan's order was to go into effect for the 1970-71 school term pending the Supreme Court's decision. On April 20, 1971, the United States Supreme Court, in *Swann* v. *Charlotte-Mecklenburg Board of Education* upheld the judgment of the district court.[40]

For the past 2 school years, Charlotte-Mecklenburg has been operating under a plan pursuant to Judge McMillan's order. The plan,

[37] *Swann* v. *Charlotte-Mecklenburg Board of Education*, 243 F. Supp. 667 (W.D.N.C. 1965), aff'd. 396 F. 2d 29 (4th Cir. 1966).

[38] *Swann* v. *Charlotte-Mecklenburg Board of Education*, 311 F. Supp. 265 (W.D.N.C. 1970).

[39] *Swann* v. *Charlotte-Mecklenburg Board of Education*, 299 U.S. 926 (1970).

[40] *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971).

developed with the aid of an educational expert, Dr. John Finger, called for creation of high school attendance zones shaped liked wedges of a pie extending outward from the center of the city.

For junior high schools, substantial rezoning of the attendance areas was coupled with the creation of nine "satellite" zones. (A satellite zone is an area not contiguous to the main attendance zone surrounding the school). Inner-city black students from nine attendance zones were assigned to nine outlying predominantly white junior high schools.

Under the plan elementary school children were assigned to schools through a combination of geographical zoning, pairing, and grouping techniques which were to result in student bodies throughout the system ranging from 9 to 38 percent black. Nine inner-city black schools and 24 suburban white schools, however, could not be desegregated through these techniques. Therefore, to desegregate these schools, two or three white schools were grouped with one black inner-city school, with transportation of black students from grades one through four to the outlying white schools, and of white fifth and sixth graders from the outlying schools to their counterparts in the inner-city.

Implementation of the Plan

This basic plan is being followed this school year with a major change, the adoption of a feeder system. Under a feeder system, once a pupil is assigned to elementary school he knows which schools he will attend throughout his school career. Each elementary school feeds into a specific junior high school which in turn feeds into a senior high school. In this way students would attend all 12 grades with many of the same students. Such a plan is consistent with the court order since presumably the ratio of black to white students in the elementary schools would remain constant in the junior and senior high schools.

Implementation of the plan led to a certain amount of confusion in the system. In the summer of 1970, approximately 30,000 students were transferred to new schools as part of the implementation of the "Finger Plan." A substantial number of teacher transfers also took place.

In the summer of 1971 implementation of the feeder plan resulted in a large number of students being reassigned for a second time in 2 years. More satellite areas were also created in the summer of 1971 to accommodate the feeder plan. Thus, many students have attended three different schools in the last 3 years. In addition, in the latter part of the summer of 1971 the board of education gave seniors the option of attending the school which they had attended during the 1970-71 school year. This necessitated postponing school opening for 2 weeks and led to much confusion.

The school board also adopted a policy during the summer of 1971 which permitted students to sign up to transfer from one school to another. The requirement for transfer was that a student exchange schools with another student of his race in the school to which he wished to transfer. School officials, however, began hearing rumors that some students were offering others up to $400 to exchange places whereupon the program was discontinued. Instead, transfer privileges were given all students who had signed up to exchange schools, regardless of whether a student of the same race replaced the student transferring out of a particular school. The consequences of these transfer provisions were that black students tended to transfer into previously all-black schools and white students tended to transfer out of such schools. Such transfers were particularly prevelant at West Charlotte High School, the only previously all-black high school still being used as a high school. As a result, the school today is nearly 50 percent black.

On September 15, 1971, the majority of schools had a black enrollment of between 20 and 40 percent, according to the local newspaper. The highest percentages of black students at any school in the system were at Hoskins Elementary and West Charlotte High School, each with a black enrollment of 45 percent. Six schools, on the other hand, had a black enrollment of 20 percent or less, with the lowest figure at Matthews Elementary School, which had a black enrollment of 10 percent.

Busing

In the 1969-70 school year, prior to massive desegregation, 23,600 of the system's 84,500

pupils were being bused by the school district and another 5,000 rode common carriers.

During the month of November 1971 a total of 46,826 students was being bused, approximately 59 percent of all students in the Charlotte-Mecklenburg School System. Of the students currently being bused, 19,724 or more than 42 percent are black. Even though black students make up only 33.12 percent of the total number of elementary students in the district, over half of the first through fourth grade students being bused are black, because students from nine previously all-black schools are now assigned to previously white schools in outlying areas.

During the 1969-70 school year, Judge McMillan found that the school system had 280 regular buses and 107 other buses or a total of 387. The system as of January 1972 operates 535 buses, of which 186 are in urgent need of replacement. At the time the order went into effect 2 years ago, the school system borrowed from the State buses which have been returned because they are unfit for the road. In addition, the school board would like to buy 140 additional buses to improve transportation service. At the present time some buses are operating on three different schedules. It was generally agreed by everyone interviewed that although there is a need for new buses, there is little likelihood that voters would approve a bond issue for that purpose. Likewise, there is little likelihood that the county commission [which must appropriate funds for the school system] would provide money for new buses.

Notwithstanding the multiple routes for the buses, only four of the system's 104 schools do not open between 8 a.m. and 9 a.m. Three high schools open at 7:30 a.m., and one junior high school begins at 7:55 a.m.

Disruptions and Petty Crime in the Schools

There were no major problems or disruptions in the school system during the first 5 months of the 1970-71 school year. From February 1970 until the end of the term, however, the school system was plagued with disturbances. It was also reported that there was a substantial increase in incidents of extortions, fights, and petty crimes. During the 1971-72 school year, however, it was generally reported that the number of such occurrences had decreased and was not much greater than prior to integration.

There is one major difference, however, between the types of problems that exist at various schools since integration. For the first time disturbances have often involved large numbers of students, and they have pitted white and black students against each other. These disturbances have been characterized by school officials, police, and the news media as riots. There have been three of them this year, all within a week of each other. On October 29, 1971, there were disturbances involving 150 to 200 students, black and white, at one high school, a second disturbance involving 100 to 150 students of both races at another high school, and on November 2, 1971, fighting involving nearly 200 black and white students. A total of nine students was hospitalized and some property damage was reported. As a result of the three incidents, 15 black students were excluded from school; 11 black students were suspended; 16 black and two white students were readmitted after suspension; and 75 black and two white students were arrested. A white school board member and several members of the black community questioned whether the black students had received fair treatment in the administration of justice. Since both black and white students were involved in all three confrontations, it was alleged that authorities tended to see only allegedly unlawful acts by the black students and not to see similar acts by the white students. Since these three incidents there have been no major disturbances at any school in the system.

COMMISSION STAFF IMPRESSIONS OF THE SCHOOL SYSTEM—JANUARY 1972

As a result of visits to a large number of schools in the Charlotte-Mecklenburg system, Commission staff made a number of observations. Almost all the white students interviewed stated that their parents were very upset by the desegregation plan, especially busing, but few expressed such feelings themselves, although many had some misgivings at the time the plan was announced. There seemed to be a widespread acceptance and in many cases enthu-

siasm for the new reorganization among principals and faculty, both black and white.

Many black students, however, felt that they were unfairly required to bear the major burden of desegregation, both by having to be bused longer than white students and because many black schools were closed or downgraded. None, however, preferred the old system of neighborhood schools which had resulted in segregated schools.

There was widespread belief that a reason for disturbances during the first year under the plan was the general feeling that total desegregation would only last a year. Many expected the Supreme Court to reverse Judge McMillan's order or that Congress would act to modify it. Thus, some students went to school during 1970-71 with the attitude that the year didn't count.

With the exception of parents who live in the "model cities" areas, there is generally no transportation available to evening PTA meetings which is a possible reason for the small black parent participation in most PTA meetings.

There generally are no ability groups within the schools. Some teachers deplored this because they felt that slower students held back those who are more advanced. Others considered this an advantage since it distributed potential discipline problems and also provided some students with an incentive to try harder. Some high school electives tend to attract a disproportionate number of students of one race.

One junior high school reported that some white children who had left the public schools to attend private schools had returned during the year. While there was some indication that this was occurring at several schools, the number of students returning to public schools does not appear to be large.

Commission Staff Impressions at Specific Schools

West Charlotte High School, a formerly all-black high school, which has the system's highest percentage of black students, was one of the schools visited by Commission staff. The principal was hopeful that next year the black-white ratio would be closer to the norm of the school system. Next year there will not be the problem of seniors finishing high school at their previous high school nor, presumably, will the school board permit transfers among the schools. In addition, the consensus among students and the principal was that since there had been only one major incident at the school this year, there would not be continued white flight. That incident, which occurred shortly after school opened, involved fighting between 40 to 50 black and white students which resulted in five being treated for minor injuries at a hospital and released. Police made several arrests, two students were expelled from school, and 20 others placed on probation.

The birthday of Dr. Martin Luther King, Jr. has been marked by widespread school tension and unrest in recent years. To alleviate some of this tension, principals in the school system decided to plan a program in memory of Dr. King. Some members of the school board were distressed by this and had the school board pass a resolution that attendance at assemblies or other observances of Dr. King's birthday would be purely voluntary. At West Charlotte High School it was reported that about 50 percent of the student body attended the observances, including a number of white students. Similar responses by both black and white students were reported at other schools and there were no reports of disturbances.

Last year major incidents occurred throughout the year at Northwest Junior High School, which formerly was all-black. Many white parents kept their children out of school from time to time. Because of the disruptions and presumably also because of the unhappiness many white parents felt at having their children attend a formerly all-black school, a number of steps were taken during the summer to alleviate tension. A new principal was appointed who had formerly been the principal at an elementary school which served one of the all-white areas from which children are now being bused to Northwest; the number of students attending the school was cut almost in half; an additional guidance counselor added; and numerous repairs made to upgrade the facility. There have been no major incidents this year and it was conceded by everyone interviewed, including white parents with children in the school, that desegregation was progressing smoothly at the school. This year the

ratio of black to white students has remained fairly consistent with an estimated 63 percent white and 37 percent black.

A remaining problem at Northwest is the reluctance of some white parents to permit their children to stay for extracurricular activities held immediately after school. As a result, while the white students have been attending such activities, the black students predominate in attendance. Reasons most often given for this were parental fears of the school's black neighborhood and inconvenience, since the school is located 6 or 7 miles from the homes of most white students. This means that unless students have their own cars, which is most often not the case, they are dependent on their parents for transportation home. Since many of the black students live in the immediate area they can walk home. It is hard to tell how much of the problem is fear and how much is inconvenience. It should be noted, however, that for many of the white students, Northwest Junior High is no further from their homes than the junior high school they would have attended if the desegregation plan were not in effect.

School officials, community leaders, and the press considered Independence High School to be the most successfully desegregated high school in the system. The facility was originally built 5 years ago to replace formerly all-black and formerly all-white high schools. Thus, although in its first year only 100 of approximately 1,200 students were black, it has been integrated from the beginning. Present enrollment of 2,100 students requires some 25 mobile units, and makes it the system's most overcrowded school. About 400 of the current students are black, of whom 25 percent come from surrounding areas and the rest are bused from the central city. Most of the white students come from the areas surrounding the school, although many of them are bused also. Like the other high schools, Independence has had a constantly changing student body during the past few years. Much of the credit for the success at the school is given to the young and dynamic white principal, who has established a good relationship with his students. During the day he spends most of his time in the school halls and open areas and thus he is on top of anything that occurs in the school.

Independence also has been fortunate in other respects. Because some of the black students are from a model cities area, a bus is available to take them home after extracurricular activities in the afternoon. Thus, unlike most of the high schools, some of the bused students are able to participate in after school events. An attempt has been made by some teachers, parents, and students to drive black students home after school to enable more of them to take part in activities. The model cities bus is also available for PTA meetings which results in better than usual participation by members of the black community.

The school system requires that for all student elections there be three black candidates, three white candidates, and three candidates chosen at large on the slate. The president of the Independence Student Council, who was elected by members of the council, is black.

The principal at Independence reported a possibility of a slight decline in academic progress at the school since total integration. He attributed this to overcrowding, not to the influx of black students as such. He also thought that having so many new teachers as well as students could have been a factor. There has generally not been much of a problem of shakedowns or extortions or other petty crimes at the school although, as was generally true at all schools, some difficulties were encountered at the beginning of the year. The principal attributed such incidents to the fact they were going through a transitional period. Students are generally free to sit wherever they like in classes and in the cafeteria. In both there has been some mixing of black and white students, although the majority of black and white students sit separately.

Opposition to the Total Desegregation Plan

The Commission staff used a number of barometers to gauge the extent of opposition to the plan. Among the indicators are growth of private school enrollment, political opposition to school board members, and the increase of organizations opposing the plan.

It has been estimated by various sources that anywhere from 5,000 to 8,000 students have left the system in the past 2 years as a result of desegregation. The Charlotte Observer, a local newspaper, reported that 4,300 white stu-

dents had left the system since 1970 while it has gained 1,900 black students. It was also reported that had the system continued to grow in the last years as it had in the past, it would now have had an enrollment of 88,500 students. Thus, the school system is more than 8,500 below what would have been expected 2 years ago. At least five new private schools have been established in the Charlotte-Mecklenburg area which are reported to be of adequate quality and are expected to survive. There have also been a large number of private schools set up in churches or other temporary quarters, but school officials do not expect these to last more than a year or two.

There has been little loss of staff from the public school system to private schools. The reasons given for this include the fact that a tight job market now exists for teachers and those now teaching would lose tenure and retirement benefits if they left the public system. The turnover rate among faculty members was actually smaller this year than has been the case in the last few years; only 400 new teachers were employed this year, compared to the previous norm of around 600.

Two organizations have been formed in recent years to oppose the school desegregation plan. The Citizens United for Fairness (CUFF) consists primarily of white middle and lower middle class homeowners located in the northwest section of the city and county, where the movement of black people into the area has been more pronounced than elsewhere in the county. There are, however, five fairly large entirely white sections.

Children from these areas are being bused to formerly black junior and senior high schools as well as to the fifth and sixth grade centers. Thus, most children who live in these areas will attend formerly all-white schools only for grades one to four. Most white children in the district are bused into the black community only for grades five and six, attending elementary, junior, and senior high schools in all-white areas. CUFF leaders state that their members' unhappiness is not over being bused into black areas, but in their childrens' being sent out of their neighborhoods for eight to 10 of their 12 school years. It should be noted that for many children living in this area, the distance to their assigned junior and senior high schools is about the same as it would be to the schools they would have attended prior to desegregation. This is not true, of course, for fifth and sixth grade children, since previously they would have attended neighborhood schools.

Since most white children in the district are bused into formerly all-black schools for only two out of their 12 years in school, the northwest group contends they are being discriminated against and maintains the area will become all-black unless school boundaries are changed. They cite the fact that a few black families have already moved into a previously all-white neighborhood and large numbers of "for sale" signs have sprung up. They brought a lawsuit in Federal court to force the school system to reassign schools, but the suit was dismissed and they reportedly will not appeal.

The other organization, Concerned Area Parents, attempts to represent citizens in the entire city and county and is primarily concerned with opposing busing for the sake of desegregation. The organization put up three candidates for school board elections in 1970 and was able to get all three elected. The consensus of most of the people interviewed was that the organization will not have the same degree of influence on the outcome of this year's board election. The general view is that they will not be able to defeat the chairman of the school board, should he decide to run again, or to elect their candidates to the other positions. This conclusion is due in part to the fact that while the present school board will carry out the court orders, it has done everything it can through the courts to have changes made in the desegregation plan.

The consensus among various persons interviewed is that there has been little community support for the desegregation plan. It has been charged that the school board has not actively supported the school desegregation plan and there has been little leadership elsewhere in the city or county in its support. The general view among those sympathetic to the plan was that it has worked, to the extent that it has, in spite of community and school board leaders. Any credit for implementation is generally given to the superintendent of schools and his professional staff.

There have been a few volunteer efforts outside the school system to aid school desegrega-

tion. Approximately 2 years ago a large number of persons, now numbering over 4,000 and made up largely of housewives and a few college students, volunteered to act as tutors for students having reading difficulties. A group of ministers has also been formed to patrol campuses when there are signs of problems. Generally, the patrol teams consist of one black and one white minister.

APPENDIX A

I. THE PROPOSED AMENDMENT TO THE CONSTITUTION RELATIVE TO PUBLIC SCHOOL ASSIGNMENT OF PUPILS

On May 6, 1971, U.S. Representative Norman F. Lent, Republican of Nassau County, New York, introduced a joint resolution, H.J. Res. 620, proposing the following amendment to the Constitution of the United States:

> Section 1. No public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school.
>
> Section 2. Congress shall have the power to enforce this article by appropriate legislation.

The Congressman stated the purpose of the amendment was to preserve the neighborhood concept, which he described as the "only truly nondiscriminatory form of educational system, as it is the only one that does not take account of racial distinctions." (Press Release issued May 4, 1971). He further said:

> Let me state categorically that I do not believe in segregation. I would strongly oppose *any* system that assigned children to a specific school on the basis of their race, whether the intention was to combine or separate the races. It is for that very reason that I oppose busing—a policy that intensifies racial distinctions by imposing artificial 'quotas' on local school systems. (*Id.*)

Mr. Lent further stated that his move came in response to the action of the Supreme Court on May 3, 1971, affirming the decision of a three-judge Federal court invalidating the Lent-Kunzman law of New York State which he had sponsored when a member of the New York State Assembly.[1] That law forbade assignment of pupils on the basis of race, except with the consent of an elected local board of education.

Discussion of Amendment

On its face, the amendment would seem to embody a neutral principle, applicable to black and white pupils alike which may be stated thus: in assigning pupils to particular schools, school officials may not consider race as a factor in determining which school they shall attend. It may even be argued that the amendment embodies the oft-repeated dictum that, under the Constitution, racial classifications are "constitutionally suspect", *Bolling* v. *Sharpe*, 347 U.S. 497,499 (1954), bear a "heavy burden of justification" *Loving* v. *Virginia*, 388 U.S. 1, 9 (1967), and that the amendment is designed to prevent discrimination in the public schools.

Such an argument is difficult to sustain in the context in which the amendment is being proposed. Its principal fallacy is that to achieve the objective of nondiscrimination in education such an amendment is unnecessary; it is abundantly clear that under the 14th amendment no State may maintain school systems segregated on the basis of race.[2]

The best source of evaluating the purpose and effect of the amendment is the Lent-Kunzman Act of New York, which is its direct ancestor. That law provided in part that:

> Except with the express approval of a board of education having jurisdiction, a majority of the members of such board having been elected, *no student shall be assigned or compelled to attend any school on account of race, creed, color or national origin*, . . . (emphasis added.)[3]

In *Lee* v. *Nyquist*[4] the court described the legislature history of this law. Before its enactment, the Regents of the University of the State of New York, who have broad supervisory powers over all of the State's public schools, were committed to a policy of ending *de facto* segregation in New York's public schools. Their efforts met with considerable local resistance. The court found that:

> It is quite apparent from the legislative history of

[1] *Lee* v. *Nyquist*, 318 F. Supp. 710 (W.D. N.Y. 1970) aff'd. per curiam 402 U.S. 935 (1971). See discussion *infra*.

[2] *Brown* v. *Board of Education*, 347 U.S. 483 (1954) and cases discussed in Part II of this memorandum.

[3] New York Education Law §3201(2) (McKinney 1970).

[4] *Supra* note 1, at 716-17.

Section 3201(2) that it was designed to turn the tables in favor of those recalcitrant local groups.[5]

In examining the constitutionality of the Lent-Kunzman Act, the court assumed the State had no affirmative duty to correct school racial imbalances which had been created by residential paterns.[6] Nevertheless, it held that the Lent-Kunzman law was invalid because this statute created an "explicit and invidious racial classification." The court found that with regard to educational policy in general under New York law, the State commissioner of education does not need the consent of elected local school boards to implement policy. By creating an exception to the broad supervisory powers of the commissioner for the single category of plans designed to alleviate racial imbalance in the schools, the State made it more difficult for minority persons "to achieve their goals", without adequate justification for the differential treatment. The statute thus placed a special burden on minorities based on their race alone.[7]

The U.S. Supreme Court dismissed the appeal from Lee without opinion (with Justices Burger, Black, and Harlan calling for further argument).[8] The Supreme Court did, however, consider a statute similar in wording to the Lent-Kunzman Act and the proposed amendment in *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43 (1971). The Court's opinion in this case makes it clear that it would view this amendment, in the context of *de jure* school segregation, as a limitation on the rights protected by the 14th amendment.

While the litigation involved in *Swann* v. *Charlotte-Mecklenburg Board of Education*[9] was in process, the North Carolina Legislature passed a law providing in part that:

> No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of creating a balance or ratio of race, religion or national origin. Involuntary busing of students in contravention of this article is prohibited, and public funds shall not be used for any such busing.[10]

The operation of this statute, known as the Anti-Busing Law, had been enjoined by a three-judge court. The Supreme Court affirmed. The Court held that the statute violated the Federal Constitution insofar as it operated to obstruct the constitutionally required disestablishment of a dual school system. In discussing the statute's failings, the Court reaffirmed the need for school officials to consider race in remedying segregation in schools.

> The legislation before us flatly forbids assignment of any student on account of race or for the purpose of creating a racial balance or ratio in the schools. The prohibition is absolute, and it would inescapably operate to obstruct the remedies granted by the District Court in the *Swann* case. But more important the statute exploits an apparently neutral form to control school assignment plans by directing that they be "color blind"; that requirement, against the background of segregation would render illusory the promise of *Brown* v. *Board of Education*, 347 U.S. 483 (1954). Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy. To forbid, at this stage, all assignments made on the basis of race would deprive school authorities of the one tool absolutely essential to fulfillment of their constitutional obligation to eliminate existing dual school systems.[11]

The Court stated also that prohibition of involuntary school transportation could not stand in the face of the constitutional requirement for desegregation of the Charlotte School System.[12]

Conclusion

By the adoption of the proposed amendment, the constitutional objections to statutes, such as those of New York and North Carolina, would

[5] *Id.* at 717. The court quotes several passages from (then) State Senator Lent in support of this view.

[6] *Id.* at 714. The court recognized, however, in *dictum* that a policy to overcome such imbalance, which was actively pursued by New York State's educational officials prior to the enactment of the statute considered in *Lee* was beneficial to the education of majority and minority children. *Id.* Moreover, earlier decisions of State and Federal courts upheld the authority of the State to pursue such a policy even in the absence of any constitutional requirement. *Id.* at 715. See also discussion in Appendix B.

[7] Such special burdens had been held to be unconstitutional by the Supreme Court in the landmark case of *Hunter* v. *Erickson*, 393 U.S., 385 (1969) which struck down a statute requiring fair housing ordinances, but no other ordinances, to be subject to local referenda.

[8] *Lee* v. *Nyquist* was followed in *Bradley* v. *Milliken*, 433 F. 2d 897 (6th Cir. 1970). (Michigan law designed to obstruct Detroit School Board desegregation plan held invalid); *San Francisco Unified School District* v. *Johnson*, 3 Ca. 3d 937, 479 P. 2d 669, 92 Cal. Rptr. 309 (1971). (California statute prohibiting involuntary transportation of pupils narrowly construed to avoid invalidation as violative of 14th amendment), and *Keyes* v. *School District Number One, Denver, Colo.*, 303 F. Supp. 279 (D. Colo. 1969.) (Rescission of voluntary desegregation plan by newly elected anti-integration board held violation of 14th amendment). For further discussion of *Keyes*, see *infra* pp. 50-51.

[9] 402 U.S. 1 (1971).

[10] N.C. Gen. Stat. §115-176.1 (Supp. 1969).

[11] *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43, 45-6 (1971).

[12] *Id.* at 46.

be moot. Thus, both Congress and the States would have the authority, which they now lack, to prevent school desegregation by means of race-conscious pupil assignments. Even in the absence of implementing legislation, the amendment by its own force would probably make such assignments susceptible to judicial attack.

The amendment would inescapably have a profound effect on efforts to achieve school integration. In disestablishing *de jure* dual school systems, the Supreme Court has characterized race conscious assignments as "the one tool absolutely essential" to eliminate dual systems.[13] Unless the courts were to construe the proposed amendment as relating only to assignments made to overcome *de facto* school segregation, it would seriously hamper or halt further desegregation in the South.

In actual effect the amendment would bring a halt to and reverse the principles which have emerged in the past 5 years of school desegregation litigation. Those developments have been threefold: first, that *de jure* segregation is to be eradicated "root and branch" and that the necessary remedy to *de jure* segregation must be conscious of the racial composition of each school's student body; second, that *de jure* segregation is to be found not only in the South but in the North and other parts of the country as well, where government involvement in segregating schools has taken forms other than a statutorily mandated dual school system; third, that even where racially imbalanced schools have not been created by government action, the government as a matter of policy should be free to assure an integrated education. Moreover, these remedial principles have not been directed solely at schools, but are applicable to the whole range of problems created by denials of equal protection.

It is conceivable schools could be desegregated by some alternative to assignment by race. Possible devices are construction of educational parks to be attended by children from areas which are larger than attendance areas currently used and which presumably could be multiracial; planned socioeconomic integration of schools which in some cases would involve racial integration as an incidental effect; and creation of metropolitan school districts by merging of city and suburban districts which would result in better integrated school systems so long as attendance areas within the system are not segregated by neighborhoods.

These alternatives cannot obscure the fact that, inescapably, for a period, the passage of this amendment would obstruct school integration. None of the possible alternatives is now required by law except for the purpose of furthering racial balance in the schools—a purpose which may become impermissible after passage of the proposed amendment. The proposed amendment, while purportedly neutral, in effect limits the 14th amendment's present ban on segregated schools.

II. SCHOOL DESEGREGATION—THE PAST 5 YEARS

The 1954 Supreme Court ruling that school segregation sanctioned by State statutes violated the Equal Protection Clause of the 14th amendment,[14] was not the end, but rather the beginning, of judicial efforts to eliminate dual school systems. Various legal developments in the area of school desegregation have occurred during the past 5 years;[15] with emphasis given to the constitutional duty of school officials to take affirmative measures to desegregate dual school systems and the broadening concept of *de jure* segregation.

A. Duty to Take Affirmative Action to Desegregate Schools

In *United States* v. *Jefferson County Board of Education,*[16] the U.S. Court of Appeals for the Fifth Circuit ruled that a State has an affirmative duty to eliminate the effects of *de jure* or State imposed school segregation.[17] At issue in *Jefferson* was the constitutionality

[13] *Id*

[14] *Brown* v. *Board of Education,* 347 U.S. 483 (1954). [*Brown I*]. One year later, the Court ordered that racially nondiscriminatory school systems be created "with all deliberate speed." *Brown* v. *Board of Education,* 349 U.S. 294, 301 (1955). [*Brown II*].

[15] This discussion, however, is limited to student desegregation. Not treated is the desegregation of faculties and staffs, a less controversial area, and one not affected by the proposed constitutional amendment. There is a significant body of law requiring teacher desegregation, which is well summarized in Emerson, Haber, and Dorsen *Political and Civil Rights in the United States,* Vol. 2 (third edition) (Supp. 1971) at 70-73. (Hereinafter cited as Emerson, 1971 Supp.)

[16] 372 F. 2d 836 (5th Cir. 1966), aff'd. on rehearing en banc, 380 F. 2d 385 (5th Cir. 1967), certa. denied sub. nom. *Caddo Parish School Bd.* v. *United States* 389 U.S. 840 (1967).

[17] *Id.* at 868.

of school desegregation plans drawn pursuant to HEW guidelines. The guidelines were based on free choice of schools and in upholding the guidelines the court emphasized that freedom-of-choice plans were acceptable only if they actually resulted in integration.[18] The decree issued by the Fifth Circuit dictated elements which must be contained in a free choice plan to assure a unitary school system. These included mandatory annual exercise of choice, with notice and explanation of the decision involved, equalization of school facilities, maintenance of remedial programs, and desegregation of faculty and staff.

In 1968, the Supreme Court issued its first significant school desegregation ruling involving the procedures used to implement *Brown's* desegregation requirement.[19] In *Green* v. *School Board of New Kent County*,[20] the Court essentially adopted the position of the Fifth Circuit. New Kent County, a rural Virginia County, had operated a total of two schools, one black and one white. In 1965, the school board adopted a freedom-of-choice plan.

The board contended that by adopting the plan, it had desegregated the school system in compliance with the law, although there was little actual integration. Using a results test, the Court held that the mere existence of a freedom-of-choice plan was insufficient, and that *Brown II* [21] required that dual school systems be abolished.

> School boards such as the respondent then operating state-compelled dual systems were . . . clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.[22]

In ruling that mere freedom of choice is impermissible if it does not result in a "unitary nonracial" school system, the Court did not outline what steps a school board must take to desegregate, but left to the district courts the responsibility of assessing the effectiveness of desegregation plans. Such plans, the Court stated, must promise "meaningful and immediate progress toward disestablishing state-imposed segregation." [23] Without dictating the means of desegregating a school system, the *Green* decision clearly mandated that dilatory tactics and tokenism were constitutional violations and that schools boards must take affirmative measures to eliminate *de jure* segregation.

After the *Green* ruling, many school boards continued to use tactics designed to avoid full integration in light of the Court not yet having addressed itself to the question of what measures a school board must take to produce a unitary school system, nor having defined "unitary nonracial." Subsequently, the circuit courts of appeal rejected freedom-of-choice plans which produced little integration.[24] The lengthiness of litigation, however, allowed most school boards to use this system for the 1968-69 school year. School boards then, with assistance from the Department of Health, Education, and Welfare, were compelled to prepare desegregation plans utilizing school attendance zones, pairing of schools, busing of pupils, etc. In addition to rejecting "freedom of choice", circuit courts also prohibited the use of attendance zones based on racially identified neighborhood lines and which produced little desegregation.[25]

In October 1969, the Supreme Court again expressed its intolerance of measures that either produced less than complete desegregation or delayed desegregation of school systems. In August 1969, the Fifth Circuit Court of Appeals had granted a request by the Department of Health, Education, and Welfare to

[18] "Freedom of choice means the maximum amount of freedom and clearly understood choice in a bona fide unitary system where schools are not white schools or Negro schools—just schools." *Id.* at 890.

[19] The Court had been silent on the question of school segregation for a decade during which time virtually no progress was made in desegregating southern school systems. U.S. Commission on Civil Rights *Southern School Desegregation 1966-67* (1967).

[20] 391 U.S. 430 (1968)

[21] *Supra* note 14. See also *Cooper* v. *Aaron*, 358 U.S. 1 (1958) prohibiting segregation by virtue of State executive and legislative action and ordering immediate desegregation of the Little Rock, Ark. School System.

[22] *Supra* note 20 at 437-38.

[23] *Id.* at 439.

[24] Hall v. St. Helena Parish School Board, 417 F. 2d 801 (5th Cir.) cert. denied, 396 U.S. 904 (1969); *U.S.* v. *Hinds Co. School Board*, 417 F. 2d 852 (5th Cir. 1969); *Felder* v. *Harnett County Board of Education*, 409 F. 2d 1070 (4th Cir. 1969); *Walker* v. *County School Board of Brunswick County*, 413 F. 2d 53 (4th Cir. 1969); *Jackson* v. *Marvell School District No. 22*, 416 F. 2d 380 (8th Cir. 1969).

[25] *United States* v. *Greenwood Municipal Separate School District*, 406 F. 2d 1086 (5th Cir.) cert. denied, 395 U.S. 907 (1969); *Henry* v. *Clarksdale Municipal Separate School District*, 409 F. 2d 682 (5th Cir.) cert. denied, 396 U.S. 940 (1969); *United States* v. *Indianola Municipal Separate School District*, 410 F. 2d 626 (5th Cir. 1969), cert. denied, 396 U.S. 1011 (1970); *Brewer* v. *School Board of Norfolk*, 397 F. 2d 37, (4th Cir. 1968); *Clark* v. *Board of Education of Little Rock*, 426 F. 2d 1035 (8th Cir. 1970); *Monroe* v. *Board of Commissioners of Jackson*, 427 F. 2d 1005 (6th Cir. 1970).

delay by 1 year the implementation of desegregation plans for 30 Mississippi school districts.[26] When HEW's plans were withdrawn, no other desegregation measures were substituted. All of the districts affected would therefore continue using their old freedom-of-choice plans.

In *Alexander* v. *Holmes County Board of Education*,[27] the Supreme Court reversed the Court of Appeals delay, stating that:

> . . . continued operation of segregated schools under a standard of allowing "all deliberate speed" for desegregation is no longer constitutionally permissible. Under explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools.[28]

In *Swann* v. *Charlotte-Mecklenburg Board of Education*,[29] the Supreme Court for the first time considered the type of remedial action needed to create a unitary school system. The district court had appointed an expert to prepare a plan for desegregating the Charlotte-Mecklenburg School District. This plan, which the district court ordered implemented, went much further than the school board's plan toward achieving racial balance throughout the system.[30] The plan, as finally approved by the district court and circuit court of appeals, necessitated extensive busing of students[31] In upholding the expert's plan, the Supreme Court not only reaffirmed the duty of school boards to take affirmative measures to eliminate dual systems, but attempted to outline the type of actions to be taken.[32] The guidelines issued by the Court dealt with four methods commonly used to desegregate school systems:

1. *Racial ratios*, the Court ruled, may be used as part of the remedy for eliminating school segregation.

2. *One-race schools* are permitted in a district if there are only "some small number"[33] of them and if they are shown not to be part of *de jure* segregation. The Supreme Court emphasized that district courts and school authorities must attempt to eliminate such schools. There is a presumption against the constitutionality of these schools, and the school authorities have the burden of providing "that their racial composition is not the result of present or past discriminatory action on their part."[34]

3. *School attendance zones* may be redrawn in order to eliminate segregated schools. Racially neutral assignment plans may often be inadequate to achieve desegregation. Zones need not be contiguous, nor must they result in students attending "neighborhood schools" if they are designed with the purpose and effect of achieving nondiscriminatory assignments.

4. *Transportation of students* was treated gingerly by the Supreme Court. Noting that "[b]us transportation has been an integral part of the public school system for years",[35] the Court stated that ordering of busing is a proper remedy in school desegregation cases. The test of how much busing is permissible is essentially one of reasonableness:

> An objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process.[36]

The *Swann* decision, although it leaves many issues untouched, is a major contribution to the law of school desegregation, in that it sustains the power of the district courts and school authorities to take strong measures, including those based especially on the race of students, to eliminate *de jure* segregation.[37]

B. Judicial Challenges to Race-Conscious Remedial Action

In 1967, the U.S. Commission on Civil Rights analyzed the many cases which challenged the right of State and local school officials to achieve school desegregation in the

[26] *U.S.* v. *Hinds County School Board*, 417 F. 2d 801 (5th Cir. 1969).
[27] 396 U.S. 19 (1969).
[28] *Id.* at 20.
[29] 402 U.S. 1 (1971).
[30] 311 F. Supp. 265 (W.D. N.C. 1970).
[31] 431 F. 2d 138 (4th Cir. 1970).
[32] "The problems encountered by the district courts and courts of appeals make plain that we should now try to amplify guidelines, however incomplete and imperfect, for the assistance of school authorities and courts." *Supra* note 29 at 14.
[33] *Id* at 26.
[34] *Id.*
[35] *Id.* at 29.
[36] *Id.* at 30-31.
[37] In a companion case, *Davis* v. *Board of School Commissioners of Mobile County*, 402 U.S. 33 (1971), the Supreme Court refused to uphold the desegregation plan of Mobile, Ala. because it treated the predominantly black eastern section of the metropolitan area as an isolated area, requiring no busing to desegregate its elementary schools, all of which were over 90 percent black. The Supreme Court remanded the case to the Circuit Court of Appeals with instructions to consider noncontiguous zoning and busing in order to fashion an effective desegregation decree.

North and South by student assignment based on the race of pupils involved. The Commission concluded that:

> The Courts consistently have upheld actions at the State or local level designed to eliminate or alleviate racial imbalance in the public schools against the charge by white parents that it is unconstitutional or unlawful to take race into consideration.[38]

REMEDYING *DE JURE* SEGREGATION

In two recent school desegregation cases, the Supreme Court explicitly affirmed the authority of school boards to consider the race of pupils in desegregating *de jure* school districts. In *McDaniel* v. *Barresi*,[39] the Court reversed an injunction against a school desegregation plan granted by the Supreme Court of Georgia because it treated students differently on the basis of race. Chief Justice Burger, for the Court, found that:

> The Clarke County Board of Education, as part of its affirmative duty to disestablish the dual school system, properly took into account the race of its elementary school children in drawing attendance lines. To have done otherwise would have severely hampered the board's ability to deal effectively with the task at hand.[40]

Justice Burger then referred to the affirmative duty of school boards to eliminate racial discrimination required by *Green*:

> In this remedial process, steps will almost invariably require that students be assigned 'differently because of their race.' . . . Any other approach would freeze the status quo that is the very target of all desegregation processes.[41]

In *Swann* v. *Charlotte-Mecklenburg Board of Education*[42] the Supreme Court considered two specific remedial measures that involved assignments which take race into consideration. One was the total use of racial quotas in each school, toward which segregation efforts should be aimed. The Court held that a court could not require, as a matter of constitutional right, any particular degree of racial balance in each school. In this case, however, the mathematical ratios were used as a "starting point in the process of shaping a remedy, rather than an inflexible requirement."[43] Such a use of racial ratios constituted a permissible equitable remedy for the circumstances of the case.

The Supreme Court also considered the legality of the system of selection of attendance areas used by the district court to disestablish the dual school system. This system was clearly designed to transfer students on the basis of race. The Supreme Court discussed in some detail the need for such remedial measures:

> Absent a constitutional violation there there would be no basis for judicially ordering assignment of students on a racial basis. All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. The remedy for such segregation may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems.
>
> . . . Racially neutral assignment plans proposed by school authorities to a district court may be inadequate; such plans may fail to counteract the continuing effects of past school segregation resulting from discriminatory location of school sites or distortion of school size in order to achieve or maintain an artificial racial separation. When school authorities present a district court with a loaded game board, affirmative action in the form of remedial altering of attendance zones is proper to achieve truly nondiscriminatory assignments. In short, an assignment plan is not acceptable simply because it appears to be neutral[44]

Remedying Racial Imbalance

Lower court decisions have (affirmed in some cases by the Supreme Court)[45] affirmed the power of school officials to overcome *de facto* school segregation, even though such action, unlike the steps taken in *Swann*, has not been held to be constitutionally required.

The power of the State to undo the effects of school segregation has been broadly defined in other decisions. In *Jenkins* v. *Township of Morris School District*, No. A-117 (June 25, 1971)[46] the Supreme Court of New Jersey stated that the State commission of educa-

[38] U.S. Commission on Civil Rights, *Racial Isolation in the Public Schools*, pt. 1, at 234 (1967).
[39] 402 U.S. 39 (1971).
[40] *Id.* at 41.
[41] *Id.*
[42] 401 U.S. 1 (1971).
[43] *Id.* at 25.
[44] *Id.* at 28.
[45] *Lee* v. *Nyquist*, *Supra* note 1 and *School Committee of Boston* v. *Board of Education*, 352 Mass., 693, 227 N.E. 2d 729 (1967) appeal dismissed, 389 U.S. 572 (1968).
[46] Cited in Emerson, 1971 Supp. at 79-80.

tion had the power to ignore district boundaries to effectuate school integration.[47]

State laws designed to overcome racial imbalance in the schools have generally been upheld as legitimate exercise of the State's police power. The Massachusetts Racial Imbalance Act,[48] which requires the withholding of State funds from districts which do not prepare and implement plans to eliminate racial imbalance, was held constitutional in *School Committee of Boston* v. *Board of Education.*[49]

Under the Illinois statute upheld in *Tometz* v. *Board of Education of Waukegan City School District No. 61,* [50] the Illinois Superintendent of Education has issued stringent regulations requiring every school district to achieve approximate racial balance in each school, corresponding within 15 percent to the racial composition of the school district. The regulations provide for State and Federal fund cutoffs for noncompliance. They have not yet been subject to judicial challenge.[51]

C. *De Jure* v. *De Facto* Segregation

The distinction between *de jure* school segregation—that imposed by law—and *de facto* segregation—that which is not the result of State law or purposeful discrimination by school authorities—is one that has been drawn by the courts in defining the type of school desegregation prohibited by the 14th amendment.[52] School desegregation rulings in the past few years have construed almost all forms of school segregation as *de jure* or have rejected the *de facto* concept with increasing frequency. The effect of these cases is to minimize the significance of the *de jure-de facto* distinction.

1. The Distinction

The argument that only legally sanctioned school segregation violates the Constitution is based on the Supreme Court's ruling in *Brown* v. *Board of Education I.*[53] The cases before the Court were all ones of the State sponsored and required segregation, but the language of the Court does not explicitly limit the holding of *Brown* to State-compelled segregation:

> Segregation of white and colored children in public schools has a detrimental effect upon the colored children. *The impact is greater when it has the sanction of the law; . . .*[54] (Emphasis added.)

The Court concluded "that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." [55]

The Supreme Court has not heard a so-called "de facto" school case, [56] and there has been disagreement among the circuit courts of appeal whether the 14th amendment imposes a duty upon school officials to correct adventitious segregation. Four courts of appeals have held that there is no such duty.[57] These rulings were all made at least 6 years ago, and at least one circuit court of appeals, the Sixth, has changed its position on the issue of *de facto* segregation.[58]

2. Abandonment of the *De Facto* Concept

During the past 5 years lower Federal court decisions have virtually nullified the distinction between *de jure* and *de facto* segregation by expanding the *de jure* concept to include activi-

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[47] However, districting by the State which had the effect of increasing racial imbalance but was dictated by legitimate considerations unrelated to race was upheld in *Wright* v. *Emporia City Council,* 442 F. 2d 570 (4th Cir. 1971) and *Spencer* v. *Kugler,* 362 F. Supp. 1235 (D. N.J. 1971).

[48] Mass. Gen. Laws, Ch. 71 Sec. 37D (1965).

[49] *Supra* note 45.

[50] 39 Ill. 2d 593, 237, N.E. 2d 498 (1968).

[51] Article "Illinois Desegregation Law is One of the Stiffest" Washington Post, Dec. 13, 1971.

[52] The leading case defining *de facto* segregation is *Bell* v. *School City of Gary;* 213 F. Supp. 819, (N.D. Ind.), aff'd. 324 F. 2d 209 (7th Cir. 1963), cert. denied 377 U.S. 924 (1964) where adventitious segregation in the schools of Gary, Ind.—racially imbalanced because of the application of a neighborhood school policy in the context of racially segregated housing patterns—was challenged. The law does not require, said the court, "that a school system developed on the neighborhood school plan, honestly and conscientiously constructed with no intention . . . to segregate the races, must be . . . abandoned because the resulting effect is to have a racial imbalance in certain schools where the district is populated almost entirely by Negroes or whites." *Id.* at 829.

See also, *Gilliam* v. *School Board (Hopewell),* 345 F. 2d 325 (4th Cir.), vacated and remanded on other grounds, 382 U.S. 103 (1965); *Deal* v. *Cincinnati Board of Education,* 369 F. 2d 55 (6th Cir. 1966); *Downs* v. *Board of Education* (Kansas City), 336 F. 2d 988 (10th Cir. 1964), cert. denied, 380 U.S. (1965).

[53] *Supra* note 14.

[54] *Id.* at 494.

[55] In 1958, the Supreme Court expressly prohibited school segregation resulting from State executive, as well as legislative, action. *Cooper* v. *Aaron* 358 U.E. 1 (1958).

[56] However, the Court granted certiorari to *Keyes* v. *School District No. 1, Denver, Colo.,* 303 F. Supp. 279 (D.Colo. 1969), Supplemental Findings and Conclusions, 303 F. Supp. 289 (D. Colo. 1969), a case involving *de facto* segregation in the Denver School System. (See discussion, *infra*).

[57] *Supra* note 52.

[58] The Sixth Circuit, in *Davis* v. *District of Pontiac,* 443 F. 2d 573 (6th Cir. 1971), distinguished *Deal* v. *Cincinnati Board of Education, supra* note 52, on factual grounds and, in effect, ordered the school board to overcome the effects of what would have been termed *de facto* segregation 6 years earlier.

ties which several years ago would have been termed *de facto* segregation.[59]

There have not been any recent decisions adopting this position, however. Rather than rejecting the concept of *de facto* segregation, courts have used factual analyses of the discrimination before them to find that almost all forms of school segregation are *de jure*, and, therefore, in violation of the 14th amendment.

The most prevalent form of school segregation, other than that imposed by law, is segregation which results from racial residential patterns. As early as 1961, a Federal district court held that the New Rochelle, New York School Board could not maintain a segregated school system which was based on racial residential districts.[60] The court noted that prior to 1949, school attendance zones had been gerrymandered to isolate black children within one school, and that the school board's failure to take affirmative measures to eliminate segregation was a violation of the 14th amendment. The court relied heavily on a broad interpretation of *Brown*, stating that it was premised on the inherent inequality of segregated education, rather than on the illegality of a State-operated dual school system.

Other Federal courts have been slow in adopting the view expressed in *Taylor*. It was not until 1967 that the position that a school board cannot use residential segregation as a basis for school attendance zones became more widely accepted.

In *U.S.* v. *Jefferson County, Board of Education*, the court characterized segregation in the South which results from residential patterns as "pseudo *de facto*". It stated:

> Here school boards, utilizing the dual zoning system, assigned Negro teachers to Negro schools and selected Negro neighborhoods as suitable areas in which to locate Negro schools. . . . Segregation resulting from racially motivated gerrymandering is properly characterized as 'de jure' segregation. See *Taylor* v. *Board of Education of the City of New Rochelle*, S.D., N.Y. 1961, 191 F. Supp. 181. The courts have had the power to deal with this situation since *Brown I*. In *Holland* v. *Board of Public Instruction of Palm Beach County*, 5th Circuit 1958, 258 F. 2d 730, although there was no evidence of gerrymandering as such, the court found that the board "maintained and enforced" a completely segregated system by using the neighborhood plan to take advantage of racial residential patterns.[61]

Affirmative use of exclusionary residential patterns as a basis for pupil assignment has been struck down in numerous other cases.[62] In *Hobson v. Hansen*, the Federal district court for the District of Columbia found that the District's use of neighborhood school policy as modified by the use of optional transfer zones designed to permit white students living in racially mixed neighborhoods to escape to an all-white or majority white school violated the 14th amendment.

School boards have argued that they have no obligation to correct a *"de facto"* system inherited from their predecessors. This contention was rejected in *U.S.* v. *School District 151 of Cook County*.[63] The district operated six grammar schools Two, located in a predominantly black area of Cook County called Phoenix, had "about 99 percent Negro" enrollment, according to the court's findings. The other four schools were located in areas outside of Phoenix which were "almost exclusively" white.

The court of appeals affirmed findings that in 1964 defendants "inherited from their predecessors a discriminatorily segregated school system which defendants subsequently fortified by affirmative and purposeful policies and practices which effectually rendered *de jure* the formerly extant *de facto* segregation."[64] These policies and practices included drawing of attendance zones, busing of pupils, and the formulation of a plan to restructure the school district. The court held that the board's conduct constituted a violation of the 14th amendment.

Other decisions have held that the use of a neighborhood school plan, even without racially discriminatory motives, is unconstitutional if such plan results in a high degree of segregation.

One of the issues in *Brewer* v. *School Board of the City of Norfolk, Virginia*, [65] was the gerrymandering of high school attendance

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[59] U.S. Commission on Civil Rights, *Racial Isolation in the Public School*, pt. 1, at 223-229 (1967).

[60] *Taylor* v. *Board of Education of the City of New Rochelle School District*, 191 F. Supp. 181 (S.D. N.Y. 1961), 294 F. 2d 36, cert. denied, 368 U.S. 940 (1961).

[61] 372 F. 2d 836, 876 (5th Cir., 1966).

[62] *Hobson* v. *Hansen*, 269 F. Supp. 401, 403, 499, (D.C.D.C. 1967), aff'd. sub. nom. *Smuck* v. *Hobson*, 408 F. 2d 175 (D.C. Cir. 1969).

[63] 404 F. 2d 1125 (7th Cir. 1968).

[64] *Id.* at 1131.

zones. The circuit court of appeals, in remanding the case to the district court, instructed it to determine:

> . . . whether the racial patterns of the district result from racial discrimination with regard to housing. If residential racial discrimination exists, it is immaterial that it results from private action. The school board cannot build its exclusionary attendance areas upon private racial discrimination. Assignment of pupils to neighborhood schools is a sound concept, but it cannot be approved if residence in a neighborhood is denied to Negro pupils solely on the ground of color.[66]

In *U.S.* v. *Board of Education, Independent School District No. 1, Tulsa County, Oklahoma,*[67] the court found that residential segregation in Tulsa was partly the result of the use of restrictive covenants prior to 1954. The imposition of a neighborhood school policy upon this residential pattern was one of the grounds on which the school system was found to violate the 14th amendment. The court dismissed the relevancy of school officials' intent in designing the neighborhood school policy:

> Before the "good faith" of the school administrators becomes constitutionally relevant, it must first be shown that the neighborhood plan has evolved from racially neutral demographic and geographical considerations.[68]

Relying on *Brewer,* the court held that the attendance zones were discriminatory from their very inception.[69]

Brewer and *Tulsa* go very far in broadening the *de facto* concept, and, in effect, make it meaningless. First, they hold that the discrimination involved need not be that of the school board and, second, even private discrimination, if it is relied upon by a school board becomes *de jure* in the sense that it falls within the ambit of the 14th amendment.

Davis v. *City of Pontiac*[70] is similar to *District 151* in its approach to the question of *de facto* segregation. The district court found that attendance zones and school construction were used in conjunction with existing residential segregation thus perpetuating a segregated school system. As a result, the school board was practicing *de jure* segregation:

> Sins of omission can be as serious as sins of commission. Where a Board of Education has contributed and played a major role in the development and growth of a segregated situation, the Board is guilty of *de jure* segregation. The fact that such came slowly and surreptitiously rather than by legislative pronouncement makes the situation no less evil.[71]

In upholding the district court, the court of appeals distinguished *Deal* (See p. 47 *supra*). It cited *Deal* for the proposition that a school district does not have a duty to act affirmatively to eliminate racial segregation which is "not attributable to school policies or practices and is the result of housing patterns and other forces over which the school administration has no control."[72] Here, however, there was a "quantum of official discrimination" sufficient to make the 14th amendment applicable.

The involvement of the school board in *Davis* with the segregated housing patterns which resulted in racially isolated schools was not greater than that of a school board in most areas. Although paying lip service to the *de facto-de jure* distinction, the *Davis* court's definition of impermissible conduct is no stricter than that of *Brewer* or *Tulsa,* which forbade reliance on private residential segregation in drawing school attendance zones.

In *Bradley* v. *The School Board of the City of Richmond,*[73] Judge Robert Merhige found that the city of Richmond and the adjoining counties engaged in *de jure* discrimination. The practices to which he referred as constituting *de jure* segregation were reliance on private discriminatory housing patterns, school construction, and drawing of attendance zones, among others. The court relied heavily on *Brewer, Davis, Tulsa* and similar cases. Although the relief ordered in the Richmond case, the consolidation of three school districts, was novel, the reasoning through which *de jure* segregation was found was very traditional.

Several recent cases suggest that a distinction between *de facto* and *de jure* segregation is not legally valid, although none explicitly holds that there is a constitutional prohibition against *de facto* segregation. The court in the *Hobson* case sets out the evils of segregation, whatever its cause, *de facto* or *de jure.* Relying on *Brown I,* it asserts that separation is inherently unequal. The court, therefore, found that *de facto* segregation harms minority

[66] 397 F. 2d 37 (4th Cir. 1968).
[67] *Id.* at 41-42.
[67] 429 F. 2d 1253 (10th Cir. 1970).
[68] *Id.* at 1258.
[69] *Id.* at 1259.
[70] 309 F. Supp. 734 (S.D. Mich. 1970), aff'd. 443 F. 2d 573 (6th Cir. 1971), cert. den. 404 U.S. 913 (1971).
[71] *Id.* at 741-42.
[72] 443 F. 2d at 575.
[73] 338 F. Supp. 67 (E.D. Va. 1972).

group children, and that the Constitution requires the court to make a "diligent judicial search for justification." [74] The court found no adequate justification for the existence of *de facto* segregation and ordered the school board to make use of alternatives and remedies to counteract its evils. The *Hobson* case is not as novel as it first appears, however. The District of Columbia had maintained a dual school system until 1954, and Judge Wright's *de facto* segregation would therefore be included within the ambit of *de jure* as it has been interpreted by many courts.

In *Spangler* v. *Pasadena City Board of Education*,[75] the court did not specifically discuss the constitutional violations of segregation as either *de jure* or *de facto*. In fact, the conclusions of law blur this distinction. The court merely concludes that *Brown I* held that separation is inherently unequal; separation deprives minority students of their constitutional rights. The use of the neighborhood school concept and the policy against crosstown busing were means by which the school board perpetrated violations of the 14th amendment.

Another case which rejects as spurious the distinction between *de jure* and *de facto* segregation is *Crawford* v. *Board of Education of The City of Las Angeles*.[76] The court said that each is merely a legal designation, and the duty of the board is to grant and give to *all* students an equal educational opportunity. The court concluded that it is practically "impossible, in the creation and maintenance of neighborhood schools, and the mandating of attendance thereat, which are in fact segregated, said schools being created and maintained by tax money, to have only *de facto segregation*."[77]

Finally, one recent decision held that by failing to eliminate school segregation, whatever its source, school authorities are acting contrary to the 14th amendment. At issue in *San Francisco Unified School District* v. *Johnson*,[78] was the construction of a State law restricting busing. Emphasizing the result oriented decisions of the Supreme Court, the Supreme Court of California held that the State cannot act to prevent the unification of segregated schools—an action which often requires busing. Relying in part on *Reitman* v. *Mulkey*,[79] the court stressed that, were the law to be so construed as to create a barrier to desegregation, the State would be involved in unconstitutional racial discrimination.[80] The court therefore held that the statute applies only to methods of transportation, and does not restrict pupil assignment.

The Supreme Court recently granted certiorari in a Denver, Colorado school case in which a central issue is the extent of a court's power to order elimination of so-called *de facto* segregation. The lower court opinions illustrate the present ambiguities of the *de facto* controversy.

In *Keyes* v. *School District No. 1, Denver, Colorado*, [81] the rescission of a voluntary plan of desegregation for some Denver schools, those in the Park Hills area of the city, by a newly elected anti-integration board was held to be an act of *de jure* segregation. The court found that the usual innocent characteristic of *de facto* segregation, e.g., site selection, attendance, school construction, assignment of teachers and the like, had been used wilfully by the board to segregate and were therefore *de jure*. The court issued a preliminary injunction barring implementation of the rescission.

In a subsequent ruling on the merits, the court carefully drew a distinction between *de jure* and *de facto* segregation. On the issue of *de jure* segregation in the Park Hills schools, the court found again for the plaintiff on the integration plans. The court refused to find *de jure* segregation in the operation of Denver schools in other areas of the city, however, and ruled that it did not have the authority to order total school desegregation because neither the Supreme Court nor the 10th Circuit have held that *de facto* segregation violates the Constitution.[82] The elements of State imposed

[74] *Supra* note 62 at 508.
[75] 311 F. Supp. 501 (C.D. Cal. 1970).
[76] No. 822, 854, Cal. Sup Ct. filed Feb. 16, 1970.
[77] See also *Berkdale* v. *Springfield School Committee*, 237 F. Supp. 543 (D. Mass. 1965).
[78] *San Francisco Unified School District* v. *Johnson*, 3 Cal. 3d 937, 479 p. 2d 669, 92 Cal Rptr. 309 (1971).

[79] 387 U.S. 369 (1967).
[80] "Yet the state cannot constitutionally countenance ob. structionism, for once the state undertakes to preserve *de facto* segregation, or to hamper its removal, such state involvement transforms the setting into one of de jure segregation." *Supra* note 78 at 958.
[81] 303 F. Supp. 279 (D. Colo. 1969). Supplemental Findings and Conclusions, 303 F. Supp. 289 (D. Colo. 1969).
[82] *Keyes* v. *School District No. 1 of Denver*, Colo., 313 F. Supp. 61 (D. Colo., 1970).

segregation which the court said must be proven (and were not in this instance) in order for it to be *de jure* were: purpose to segregate, segregatory result, present segregation, and causal connection between present injury and past discrimination.[53]

In agreeing to hear the *Keyes* case, the Supreme Court seems to be willing to grapple with the issue of the distinction between *de facto* and *de jure* segregation. In *Swann* v. *Charlotte-Mecklenburg Board of Education*, Chief Justice Burger was careful to limit the ruling to "State enforced separation of races in public schools", or the dual school system.

> We do not reach in this case the question whether a showing that school segregation is a consequence of other types of state action, without any discriminatory action by the school authorities, is a constitutional violation requiring remedial action by a school desegregation decree. This case does not present that question and we therefore do not decide it.[54]

In *Keyes* the Court will be faced not only with the question of the validity of the *de facto* concept, which has been greatly weakened by lower court rulings, but additionally it will have to define a school board's duty, if any, to overcome school racial imbalance which is not the direct result of official racial discrimination.

D. Equalization of School Financing

The two recent decisions which came closest to finding governmental responsibility for purely *de facto* segregation, *Keyes* and *Hobson*, emphasized the physical inequality of majority and minority school facilities in Denver, Colorado, and Washington, D.C.

An important and somewhat parallel development during the past few years has been the increasing number of challenges to the unequal manner in which States finance public schools. This issue relates to school desegregation insofar as one of the aims of school integration is to provide equality of education regardless of race.[55] However, this development in no way obviates the need for school desegregation either as a legal or as a practical matter.

The principal case dealing with inequality in school finances is *Serrano* v. *Priest*, 5 Cal. 3d 584, 487, P. 2d 1241, 96 Cal. Rptr. 601 (1971). In *Serrano* the Supreme Court of California held that the State's system of financing public schools, which is similar to that of most States, violated the Equal Protection Clause of the Constitution. Public schools were financed principally through local property taxes, raised by each school district, and were supplemented by State funds consisting of flat grants per child plus equalization aid. This system resulted in school expenditures in 1968-69 ranging from $577.49 per pupil in one of the poorest districts to $1,231.72 in one of the richest. These inequalities resulted mostly from the wide disparity in the value of taxable property in each district. For the same school year the poorer district mentioned above had a property tax of $5.48 per $100 of assessed valuation, while the wealthy one taxed at a rate of only $2.38 per $100. The California Supreme Court concluded that a fundamental right of poor citizens—the right to equal education—had been abridged without compelling justification.[56]

Inequalities in school financing have generally had an adverse effect on minority children who tend to reside disproportionately in poorer school districts which cannot spend as much on schools as more affluent areas. For example, in a recent New Jersey case, the court found that the State's disparities weighed heavily on black and Puerto Rican families.[57]

Nevertheless, equalization of per pupil expenditures may work to the disadvantage of minority schools in some cases. Large urban centers often have higher per pupil expenditures (and costs) than rural or suburban districts and equalization may be to their disadvantage.[58] Secondly, available studies show that per pupil school expenditures bear far less

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[53] *Id.* at 74-75.

[54] 402 U.S. 1, 23 (1971). Although the Chief Justice was careful to characterize *Swann* as a traditional *de jure* case, the district court opinion discussed the patterns of racial residential segregation, documenting the involvement of local, State, and Federal governments in the settlement patterns. The district court found that the school board had located schools and assigned pupils on the basis of these housing patterns, and that "now is the time to stop acquiescing in those patterns" 300 F. Supp. 1358, 1365-66, 1372, (W.D. N.C. 1969).

[55] *Hobson* v. *Hansen*, *supra* note 62 at 31-32, and *Keyes* v. *School District Number 1*, *supra* note 81 at 34-35.

[56] Other cases reaching similar conclusions are *Van Dusartz* v. *Hatfield*, 334 F. Supp. 870 (D. Minn. 1971) and *Rodriquez* v. *San Antonio Independent School District*, 337 F. Supp. 280, (W.D. Texas, 1971).

[57] *Robinson* v. *Cahill*, No. L-18704-69 (Super. Ct. N.J. 1971). While Jersey City, Paterson, and Camden spent under $900 per year per pupil, suburban expenditures were as high as $1,454.

[58] For example, Newark has a per pupil expenditure rate of $1,121, less than the richest districts, but more than the poorest. *Id.*

relationship to student achievement than one would expect.[89] The role played by the composition of the student body seems to be far more determinative of achievement.[90] Insofar as racial integration brings about socioeconomic integration, it seems to be more important than money in furthering the improvement of the education of minority pupils who are now attending low-income area schools.[91] But most important, equalization of finances does not reach the issue faced by *Brown* v. *Board of Education*—that in a society in which one race has been stigmatized as inferior by a majority, segregation by race imprints that stigma on the young. Only the integration of education can directly overcome the harm thus created.

[89] See Schoetlle, *The Equal Protection Clause in Public Education*, 71 Colum. L. Rev. 1355, 1378-1388 (1971) for a comprehensive review of current research and findings.

[90] *Id.*

[91] Equalization can of course facilitate integration by lessening disparities between schools attended.

APPENDIX B

RACE CONSCIOUS REMEDIES IN FIELDS OTHER THAN EDUCATION

Race conscious policies are an essential element of achieving equality for blacks and other minorities. Such measures are used for three different purposes, each one of which is essential in carrying out the purposes of the equal protection clause.

I. MEASURES NECESSARY TO REMEDY THE CONSEQUENCES OF ILLEGAL DISCRIMINATION

As the United States Supreme Court expressly stated in *North Carolina Board of Education* v. *Swann*, race conscious remedies are an essential tool in undoing illegal school segregation, and, therefore, forbidding such remedies would have the practical effect of repealing *Brown*.[1]

Race conscious remedies are an essential part of undoing illegal discrimination in all areas—not merely in education. Thus, for example, the courts frequently require race conscious recruitment policies as the remedy for illegal employment discrimination. In *Local 53, Asbestos Workers* v. *Vogler*, 407 F. 2d 1047 (5th Cir. 1969), the Fifth Circuit upheld an order requiring a labor union to provide for future referral of blacks on an alternating basis with whites. Comparable relief was recently upheld by the Eighth Circuit in *Carter* v. *Gallagher*, Civ. No. 71-1181, decided January 7, 1972 (8th Cir *en banc*).

The thread which runs through these cases is the finding that—as the Supreme Court stated in *North Carolina Board of Education* v. *Swann*—the remedy for discrimination against a class must include compensatory relief for that class. Therefore, measures which seem discriminatory on their face, in fact are found upon examination to be necessary to correct the consequences of past discrimination.

[1] 402 U.S. 43 (1971).

The above cases pertain to hiring and recruitment. Race conscious remedies for violation of Title VII of the Civil Rights Act of 1964,[2] which forbids employment discrimination, have been required in other contexts as well, such as undoing the effects of discriminatory promotion practices. *See*, e.g., *Papermakers and Paperworkers, Local 189* v. *United States*, 416 F. 2d 890 (5th Cir. 1969), *cert. den.* 397 U.S. 919 (1970); *Quarles* v. *Philip Morris*, 279, F. Supp. 505 (E.D. Va. 1968).

The same principle is equally applicable in relation to housing discrimination. Thus, for example, in *Gautreaux* v. *Chicago Housing Authority*, 304 F. Supp. 736 (N.D. Ill. 1969), the court required that the Chicago Housing Authority cease to place public housing principally in areas of minority concentration, as a remedy for past discrimination in the location of public housing units. Here, again, a race conscious remedy was found necessary to undo the mischief of past racial discrimination.

II. MEASURES NECESSARY TO PREVENT THE FUTURE OCCURRENCE OF ILLEGAL DISCRIMINATION

In an enormous range of contexts, "color-blind" policies virtually assure discrimination. The teaching of those court decisions which have found that Northern style school segregation is unconstitutional is that passive acquiescence may produce segregation just as surely as expressly discriminatory policies.

The need for race conscious affirmative measures to prevent the occurrence of discrimination in other contexts has been demonstrated by many court decisions.

In the field of employment, the Supreme Court recently held that the actual effect of employment practices, procedures, and tests upon minorities is the concern under Title VII, and that it is no defense that the employer was not

[2] 42 U.S.C. § 2000e (1970).

aware of, or did not intend, discriminatory effects. *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971).

Another example from the employment field is the race conscious affirmative action required of Federal contractors under Executive Order 11246. The order requires careful continuing assessment of the impact of employment practices upon minorities, and programs designed specifically to recruit and upgrade minorities.

In the field of housing, it is no less clear that colorblind policies may lead to discriminatory consequences. For example, in *Norwalk CORE* v. *Norwalk Redevelopment Agency*, 395 F. 2d 920 (2d Cir. 1968) the Second Circuit found that where the renewal agency failed to take steps to neutralize the effects of private housing market discrimination upon minority displacees, it would itself be engaging in discrimination as to the persons displaced. Similarly, in *Kennedy Park Homes Assn.* v. *City of Lackawana*, 318 F. Supp. 699 (W.D. N.Y. 1970), *aff'd*, 436 F. 2d 108 (2d Cir. 1970), *cert. den.*, 401 U.S. 1010 (1971), the court overturned certain restrictive zoning ordinances noting that deprivation of equal housing opportunity may occur "by sheer neglect or thoughtlessness" as well as by conscious design.

Yet another instance of the need for race conscious scrutiny of the actual effects of actions arises in the field of voting. In *Gaston County* v. *United States*, 395 U.S. 285 (1969), the Supreme Court struck down "fair and impartial" administration of voter literacy tests on the grounds that their practical consequence was to discriminate against blacks who had been relegated to inferior schooling over the years. Colorblind use of literacy tests, the Court held, "would serve only to perpetuate these inequities in a different form." *Id.* at 297.

III. MEASURES NECESSARY TO OVERCOME RACIAL INEQUALITIES

The school desegregation measures adopted by New York, Illinois, Massachusetts, and many school districts around the Nation, are based on the view that school segregation—*whether or not illegal*—should be remedied in order to help obtain equality for minorities. Such measures as these, again, have been paralled by race conscious measures in a variety of other fields, similarly aimed at undoing racial inequities. It should be noted that such remedial measures are a proper means of fulfilling the promise of the equal protection clause. Thus, in *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966), the Supreme Court held that it was a valid exercise of Congress' authority under the equal protection clause, to forbid application of English literacy voter tests to persons schooled in Puerto Rico. This provision of the Voting Rights Act, the Court held, was plainly adopted to further the aims of the equal protection clause since it would be "helpful in gaining nondiscriminatory treatment in public services for the entire Puerto Rican community." *Id.* at 652.

A variety of other steps have been taken by the Federal Government responsive to the specific needs of minorities. In the field of business and manpower, for example, the special needs of minority businessmen have received attention in Federal procurement policies as well as in special minority business programs. With respect to manpower, the disadvantaged position of minorities is reflected in the very definition of "disadvantaged", which, for manpower program purposes, includes membership in a minority group among the indicia of disadvantage.

In the field of housing and urban development, Congress has recognized the need to overcome patterns of racial concentration, and the Department of Housing and Urban Development (HUD) has responded on a variety of fronts with requirements that recipients of developmental assistance take remedial measures. In connection with water and sewer and open space grants, for example, jurisdictions must deliberately plan to assure that minorities are able to secure adequate housing opportunities throughout the metropolitan area. Also, in the location and the marketing of federally assisted housing, HUD has made clear that "neutral", "colorblind" policies are unacceptable since, too often, their practical effect is to adopt and perpetuate existing discriminatory patterns.

In a broad range of fields, Federal, State, and local governments have been required by the courts to adopt, or have voluntarily adopted, measures which are based on express recognition of the historically unequal position

of minorities, and of the need for special corrective action to overcome such inequalities.

Such measures are not unfair and discriminatory. On the contrary, given the history of discrimination and disadvantage in which they are set, they are essential in order to secure equality.

In the presence of disadvantage, to forbid effective race conscious remedy is to repeal the equal protection guarantee. The effect of the proposed amendment, thus, would be that the field of public education would stand alone, as the one field in which equality is to be condoned and perpetuated.

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